



Transcript of Hearing

Date: October 24, 2016

Case: Application of Shelter Development, LLC, In Re:

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APPLICATION OF SHELTER :

DEVELOPMENT, LLC : Case No. CU 16-14

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HEARING

Before Hearing Examiner Lynn A. Robenson

Rockville, Maryland

Monday, October 24, 2016

10:23 a.m.

Job No.: 126174

Pages 1 - 132

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1	C O N T E N T S	
2	STATEMENT	PAGE
3	By Mariella Cacho	8
4	By Marissa Faraclas	19
5	EXAMINATION OF MARIELLA CACHO	
6	By Ms. Harris	15
7	EXAMINATION OF MARISSA FARACLAS	
8	By Ms. Harris	24, 37
9	By The Hearing Examiner	28
10	EXAMINATION OF THOMAS LENHART	
11	By Ms. Harris	41, 54
12	By The Hearing Examiner	53
13	By Ms. Faraclas	87
14	By Ms. Cacho	92
15	EXAMINATION OF MIGUEL IRAOLA	
16	By Ms. Harris	100
17	EXAMINATION OF ANDREW TEETERS	
18	By Ms. Harris	114
19		
20	CLOSING STATEMENT	
21	By Ms. Harris	116
22		

1 P R O C E E D I N G S

2 HEARING EXAMINER: There's no (inaudible).
3 Just a minute.

4 All right. Is the court reporter ready?
5 (Speaking out of hearing.)

6 HEARING EXAMINER: Okay. This is a public
7 hearing in the matter of CU 1614, Shelter
8 Development LLC, an application for a
9 conditional use under zoning ordinance 59332 E
10 2 C to establish a residential care facility on
11 2.67 acres located at 5 -- 5510 Grosvenor Lane.
12 I do wanna thank the -- everyone for their
13 patience. Is Mr. Cline -- Mr. Cline.

14 MALE VOICE: No.

15 FEMALE VOICE: He is not here this
16 morning. He e-mailed us this morning and said
17 he was not going to be present, but he was fine
18 with us going forward, clearly, though.

19 HEARING EXAMINER: Okay. Well, let me do
20 this. I -- again, I appreciate everybody's
21 patience. Thank you, court reporter. Let's
22 have you identify yourselves for the record.

1 He needs -- Mr. Lenhart needs no introduction
2 but, no, go ahead.

3 MS. HARRIS: Okay. Good morning. Pat
4 Harrison and (inaudible) here on behalf of the
5 applicant.

6 HEARING EXAMINER: Okay. Thank you. And
7 is there anyone in opposition? I see a hand.

8 FEMALE VOICE: No, I -- I would like
9 (inaudible) introduction, maybe you will know
10 him, but I don't know him.

11 HEARING EXAMINER: We're getting to that.

12 FEMALE VOICE: Okay. Thank you.

13 HEARING EXAMINER: Now, are you in
14 opposition? Would you like to come up?

15 FEMALE VOICE: Yes, I'm in opposition.

16 HEARING EXAMINER: Okay. Why don't you
17 come up.

18 FEMALE VOICE: Thank you.

19 HEARING EXAMINER: Uh-huh.

20 Now, please -- no, first sit. And then
21 can you just identify yourself for the record?

22 MS. CACHO: My name is Manila Cacho. I'm

1 a homeowner on Grosvenor Lane.

2 HEARING EXAMINER: Grosvenor Lane. Okay.

3 And?

4 MS. FARACLAS: I'm Marissa Faracclas. I
5 live on Long Oak Drive in the Wild Wood Manor.

6 HEARING EXAMINER: Okay.

7 MS. FARACLAS: Fleming. Sorry, I'm
8 Fleming. Sorry, they cross over.

9 HEARING EXAMINER: Okay.

10 MS. CACHO: There's two neighborhood
11 associations that cross Grosvenor. One is Wild
12 Oak Manor.

13 HEARING EXAMINER: Right.

14 MS. CACHO: And the other one is Fleming.

15 HEARING EXAMINER: Right.

16 MS. CACHO: So I live in the Wild Oak side
17 and she lives in the Fleming side.

18 HEARING EXAMINER: Fleming side.

19 MS. CACHO: Yes.

20 HEARING EXAMINER: Okay. Thank you. Just
21 for your benefit, this hearing is informal but
22 it does have certain formalities, and your

1 testimony is under oath and will be subject to
2 cross-examination. All right? Now,
3 Mr. Fleming testified -- are you aware of
4 Mr. Flemings?

5 MS. HARRIS: Mr. Cline.

6 HEARING EXAMINER: I'm sorry.

7 MS. HARRIS: Mr. Cline on Fleming.

8 HEARING EXAMINER: Fleming is the street.

9 MS. CACHO: Yes.

10 HEARING EXAMINER: I really am much better
11 than I was Wednesday or Thursday, but okay.

12 With that, it's the -- we already did --
13 why don't we do this. Would you like to take
14 the opposition's testimony first and then if
15 you have witnesses -- because we're a little
16 out of order here and -- and I know what you're
17 thinking, but I would like to let their
18 testimony in, if -- based on their testimony,
19 that might give you an opportunity to address
20 it on your rebuttal.

21 MS. HARRIS: And that is fine. The one
22 thing that I would note, based on the

1 communications that we've had with both the
2 Fleming and the new home owner's associations
3 in the Long Wood Manor is that we have
4 essentially reached agreement with them, and so
5 we came in here this -- this morning prepared
6 to put on our last witness and then address
7 just two -- two additional points on rebuttal.
8 If -- so I just wanna caveat that if they raise
9 something that's beyond the scope of rebuttal
10 for the -- the witnesses that are here, we may
11 need to call additional witnesses.

12 HEARING EXAMINER: Understood.

13 MS. HARRIS: Okay.

14 HEARING EXAMINER: All right. What I'm
15 going to do -- typically the applicant goes
16 first and then we've already been through the
17 opposition testimony. I am gonna let you
18 testify even though the -- the opposition
19 already finished its case, all right? So
20 please raise your right hands. We're swearing
21 both, for the record.

22 Do you solemnly affirm under penalties of

1 perjury that the statements you're about to
2 make are the truth, the whole truth, and
3 nothing but the truth?

4 FEMALE VOICE: Yes.

5 HEARING EXAMINER: Okay. Please state
6 again your name and address.

7 MS. CACHO: My name is Mariella Cacho. My
8 name -- do you need me to spell it?

9 M-a-r-i-e-l-l-a, last name C-a-c-h-o. And I
10 live at 5609 Grosvenor Lane. It is --

11 HEARING EXAMINER: Okay. What would you
12 like to say?

13 MS. CACHO: I -- I have not been in
14 contact with any associations, per se.

15 HEARING EXAMINER: Uh-huh.

16 MS. CACHO: Because we're all volunteers.

17 HEARING EXAMINER: I understand.

18 MS. CACHO: We don't work together. It
19 has come to my attention that big sign about
20 the hearing?

21 HEARING EXAMINER: Yes.

22 MS. CACHO: And there's -- they're going

1 to construct -- they wanna do a conditional use
2 changed for a residential facility for more
3 than 60 people. That's my understanding. But
4 it is an R 90, zoning and it's 2.71 acres, and
5 they wanna build 104 beds in a little, tiny
6 space where traffic is horrible. And then it's
7 a senior facility where we'll all get there,
8 age wise, and we already have a place quarter
9 mile on the right. And we have the sirens and
10 the -- the noise because (inaudible) in the
11 middle of the night. Find it very hard to
12 sleep.

13 (Laughter.)

14 MS. CACHO: Sorry.

15 HEARING EXAMINER: No, he's laughing
16 because he just spilled a lot of water. So.

17 MS. CACHO: Okay.

18 HEARING EXAMINER: He wasn't laughing at
19 you. He was laughing a --

20 (Cross talk.)

21 MS. CACHO: Apology accepted.

22 HEARING EXAMINER: Himself, yes. Go

1 ahead.

2 MS. CACHO: Yeah, so the -- the traffic is
3 a big concern. I've been in that house for 16
4 years and I've seen look there is a newly
5 developed Fleming Park side.

6 HEARING EXAMINER: Uh-huh.

7 MS. CACHO: And it was a beautiful piece
8 of wood area, and now we have all these little
9 townhouses. And actually I have -- I have
10 disagreement with when they said that the
11 property said that they're going to build is
12 townhouses, if -- the neighborhood itself is
13 single family homes. They --

14 HEARING EXAMINER: -- wait.

15 MS. CACHO: Go ahead.

16 HEARING EXAMINER: They're not building.
17 The applicant here is not building townhouses.

18 MS. CACHO: I know. I know.

19 HEARING EXAMINER: Oh, you're referring to
20 --

21 MS. CACHO: -- the other ones.

22 HEARING EXAMINER: -- the other set of

1 townhouses.

2 MS. CACHO: The new one, that --

3 HEARING EXAMINER: -- yes, yes, yes, I
4 understand.

5 MS. CACHO: The neighborhood just change
6 and they wanna keep changing and we don't want
7 that.

8 HEARING EXAMINER: Okay. I understand.

9 MS. CACHO: That's -- and then whenever
10 the traffic report, I read that -- some very
11 respectable firm I will assume did it.

12 HEARING EXAMINER: Well, this is -- just
13 so you know, this is our -- your -- this is the
14 traffic expert sitting there.

15 MS. CACHO: Perfect.

16 HEARING EXAMINER: He's gonna identify
17 himself in a moment.

18 MS. CACHO: Okay. Nice meeting you.

19 I didn't see any -- any numbers for
20 visitors. It -- it stated when the shift were
21 going to change, plus how many employees coming
22 at three, leaving at seven, and then there are

1 some trucks coming in, the trash the -- the
2 (inaudible) people, the food people. I mean,
3 there's going to be a lot of trucks and things
4 coming in and out of that place. But I didn't
5 see any family visitors, what the schedule will
6 be. Or it's up to the (inaudible) setting up
7 the facility, so I -- that's concerning me, to
8 tell you the truth.

9 HEARING EXAMINER: Okay.

10 MS. CACHO: What else?

11 HEARING EXAMINER: Well, you can't ask her
12 --

13 (Cross talk.)

14 HEARING EXAMINER: -- 'cuz this is your
15 time.

16 MS. CACHO: That's my time.

17 HEARING EXAMINER: Uh-huh.

18 MS. CACHO: So really the traffic and
19 is -- 'cuz as is right now, it's very hard to
20 get out of my driveway where we're at we're in
21 peak hours, and we don't need other assisted
22 living facility within 25 miles. I mean,

1 point -- a quarter mile from each other. If
2 you cross the bridge, because if you see where
3 we're located, we have two bridges. We have
4 Maplewood Assisted Facility that just half a
5 mile down the way, and we have, I don't know,
6 the --

7 (Speaking out of hearing.)

8 MS. CACHO: No, that --

9 HEARING EXAMINER: -- no, you --

10 MS. CACHO: -- you cannot talk.

11 MS. FARACLAS: Okay.

12 MS. CACHO: (Inaudible) is just on
13 Grosvenor, but, no, I'm talking on Tuckerman,
14 you cross the other bridge behind you, there's
15 another huge assisted facility. And we just
16 want single family houses.

17 HEARING EXAMINER: Okay.

18 MS. CACHO: That's my.

19 HEARING EXAMINER: Okay. I understand.

20 MS. CACHO: Concern. Thank you.

21 HEARING EXAMINER: Ms. Harris -- now, this
22 is the time where Ms. Harris can ask you

1 questions.

2 MS. CACHO: Yes, please.

3 HEARING EXAMINER: So, Ms. Harris, do you
4 have any questions for her?

5 MS. HARRIS: I don't. I think what I
6 heard primarily had to do with traffic and
7 we'll put up Mr. Lenhart on (inaudible).

8 HEARING EXAMINER: Okay. Now, you also --
9 if you have any questions of Mr. Lenhart, you
10 can ask those after he testifies.

11 MS. CACHO: I think I'm more traffic and
12 noise. Not only traffic is my concern --

13 HEARING EXAMINER: -- noise from what?
14 The --

15 MS. CACHO: -- noise from the trucks
16 coming in and out. Beep, beep, beep, beep,
17 backing down (inaudible), and the sirens.
18 We're going to have a lot of emergency trucks
19 coming in and out of that facility just because
20 of the nature of the business.

21 HEARING EXAMINER: Okay.

22 MS. CACHO: And -- sorry. And it's --

1 it's a residential facility, but for my
2 understanding, that's a commercial facility, so
3 we don't -- we would not like it to be changed.
4 That's a residential --

5 HEARING EXAMINER: -- why do you think
6 it's a commercial facility?

7 MS. CACHO: Because they're paying
8 somebody to live there. It's not like a lot of
9 townhouses where you just buy your house.
10 There's a business. It's a business.

11 HEARING EXAMINER: Well, it could be an
12 apartment building and that's still
13 residential. I'm just saying.

14 MS. CACHO: Yeah, but they are serving
15 people there. They have workers working there,
16 in and out. An apartment building only have,
17 like, two engineers, per se. Here we have
18 nurses in and out, we have doctors, we have
19 people, we have cooks.

20 HEARING EXAMINER: Okay.

21 MS. CACHO: There's a lot of people going
22 in and out of (inaudible).

1 HEARING EXAMINER: Okay. I understand
2 your point.

3 MS. CACHO: Uh-huh.

4 HEARING EXAMINER: Okay.

5 MS. HARRIS: Now I do have two questions.

6 HEARING EXAMINER: Yes.

7 BY MS. HARRIS:

8 Q Or several questions. One is are you --
9 are you aware of the fact that under the zoning
10 ordinance, assisted -- assisted living facilities
11 are in fact classified as residential?

12 A No, I'm not.

13 Q Okay. And then did you -- when you talk
14 about the noise from the deliveries, do you have any
15 knowledge as to how many deliveries a day there will
16 be to this facility on average?

17 A It's a -- it's a big facility, 104 beds.

18 Q Uh-huh.

19 A So a lot of peoples going to be living
20 there, a lot of peoples going to eat there. You
21 need to wash their bed, the (inaudible) the linens.
22 Trash need to come in and out. It's not -- I don't

1 know the schedule, maybe once a week. I don't know,
2 maybe more than that, maybe twice a week. There's a
3 lot of big trucks.

4 HEARING EXAMINER: Well, you -- you don't
5 have your --

6 MS. CACHO: -- knowledge. Yeah, I don't
7 have knowledge.

8 HEARING EXAMINER: So.

9 MS. CACHO: I'm assuming.

10 BY MS. HARRIS:

11 Q Would it surprise you that the average
12 number of truck deliveries a day is just one and a
13 half deliveries a day?

14 A One and a half a day. That's it,
15 one-half -- okay. It surprise me, yes.

16 MS. HARRIS: That's all my questions.

17 HEARING EXAMINER: Okay. Thank you.

18 Anything else based on her questions?

19 MS. CACHO: I have one, and it just slip
20 my mind. Oh, you're -- you're going to have a
21 bus, a bus with 15 people taking residents in
22 and out?

1 HEARING EXAMINER: Okay. The -- really
2 it's just to address the deliveries and the
3 traffic that you just --

4 MS. CACHO: -- well, that's traffic,
5 because that little bus, 15 people bus is going
6 in and out of that -- our street. I don't know
7 how many times. So that will add to traffic.

8 HEARING EXAMINER: Okay. But you don't
9 know how frequently.

10 MS. CACHO: I don't -- I don't -- I don't
11 know. But you'll have 94 -- 94 residents.
12 Only 15 fit in one bus, so I'm just doing my
13 math.

14 HEARING EXAMINER: Yes.

15 MS. CACHO: In my head.

16 HEARING EXAMINER: Maybe that's something
17 you can bring up.

18 MS. HARRIS: Yes, and in fact, (inaudible)
19 you had one other question about the bus that
20 we were planning to put Mr. Teeters back on, so
21 we'll add that to the list.

22 HEARING EXAMINER: Okay. Thanks.

1 MS. HARRIS: Uh-huh.

2 HEARING EXAMINER: Any --

3 MS. CACHO: -- I think -- no, I think I
4 spoke, I'm here, I'm glad I did it --

5 HEARING EXAMINER: -- and thank you for
6 coming in and participating.

7 MS. CACHO: Uh-huh.

8 HEARING EXAMINER: Can you please state
9 your name and address for the record?

10 MS. FARACLAS: Marissa Faracclas.

11 HEARING EXAMINER: Can you speak up a
12 little bit?

13 MS. FARACLAS: Yes, sorry. Marissa
14 Faracclas. M-a-r-i-s-s-a F-a-r-a-c-l-a-s, and
15 I'm 5902 Lone Oak Drive.

16 A lot of my comments are very similar. I
17 am on the Fleming Park side of the issue, and
18 what we see is mostly my biggest concern is
19 traffic, which I'm not sure if I should wait,
20 but the concern I'm gonna have is I have yet to
21 see the routes for the ride on buses. We do
22 not -- similarly, we have just been to a

1 hearing for sidewalks on Lone Oak Drive, which
2 we currently don't have. We have a lot of
3 walkers on our street. We don't have sidewalks
4 on our end. I'm at the top of Lone Oak Drive.
5 The bottom half of the street does have it.
6 The results of the hearing have yet to be
7 determined. There was a great opposition and
8 then there were a lot of people for, so we're
9 not sure where we're gonna get on that.

10 But the concern is, as Mariella mentioned,
11 is the trucks, the visitors for this new town
12 home community that's gone to the end of
13 Fleming and between Grosvenor and Lone Oak, it
14 wasn't supposed to be a driveway, but because
15 of fire code there needed to be a driveway so
16 people can -- we have yet to have voting on how
17 people are gonna be able to enter and exit
18 their own community.

19 HEARING EXAMINER: Uh-huh.

20 MS. FARACLAS: And that's concerning,
21 because while we have speed bumps, the reason
22 we -- people want sidewalks is because

1 everybody still speeds down the street. I'm
2 there in the morning picking up kids at the bus
3 stop and we're literally grabbing even older
4 children by the collar, don't go because --
5 it's an area that is currently under quite a
6 bit of maintenance work.

7 HEARING EXAMINER: Uh-huh.

8 MS. FARACLAS: The WSSC, the water project
9 has been there for six months and hopefully
10 they'll be finishing soon. The roads are
11 currently not paved. We're not quite sure --
12 we have hoses sticking out of our roads.
13 Granted, this is a project that of course will
14 end, obviously. It's a temporary thing. But
15 it's a very busy street. We have accidents on
16 --

17 HEARING EXAMINER: -- which is --

18 (Cross talk.)

19 MS. FARACLAS: -- Lone Oak Drive, and that
20 is how the -- the only way to get to Fleming is
21 from Lone Oak Drive or Grosvenor. You have to
22 go down one of those roads to get there.

1 HEARING EXAMINER: Okay.

2 MS. FARACLAS: Now, we do have speed
3 bumps, which I would love to say deters people
4 from speeding, but it really doesn't. And
5 there are lots of ways that that can be
6 addressed. But the concern is the visitors.
7 As somebody who has had elderly family members
8 in facilities, they go every day. If it's your
9 mother, your father, you're gonna be there
10 every day. It's the amount of traffic that
11 it's gonna create for people coming and going
12 through the neighborhood. So -- and I
13 apologize for not remembering your name. But
14 is there --

15 (Cross talk.)

16 MS. FARACLAS: -- process for people
17 coming in and going out? There's, you know,
18 we're very near a metro. We have a lot of
19 traffic from that. We're right near the
20 entrance of the 270 and 495, so we have a lot
21 of traffic from that, and that's how people get
22 through. The Lone Oak area is for people who

1 want to skip the traffic light to get to the
2 metro at the bottom of Grosvenor. They cut
3 through Lone Oak Drive. They go all the way
4 down to Fleming or one of the side streets and
5 then they turn left and then they are
6 automatically on Grosvenor. So there's a --
7 that's why our area happens to have a high
8 volume of traffic. Lots of trucks. Not the
9 tractor trailers, per se, but the smaller,
10 less -- small business commercial size trucks
11 coming through the neighborhood, not
12 necessarily obeying speed laws, and it's very
13 concerning, especially considering the
14 neighborhood is a very high volume of children,
15 and there is a park at the end of that street,
16 so we have a lot of kids and we don't have
17 sidewalks. And at least we don't have them
18 yet. We might -- we might, we might not, at
19 least on our end of the street, so it's a very
20 big concern for walkers -- for walkers, for
21 small children. It's a very big concern, not
22 for necessarily the people living in the

1 facility, but it's all the people who are gonna
2 go as a result and that's a huge concern,
3 because I would visit daily if I were nearby,
4 so.

5 HEARING EXAMINER: Okay. All right.
6 Anything else?

7 MS. FARACLAS: No.

8 HEARING EXAMINER: Okay. Do you have any
9 questions?

10 BY MS. HARRIS:

11 Q Yes. Were you aware that in connection
12 with the Fleming Avenue Association's non-opposition
13 of this project, they requested a condition which
14 would require the applicant to in all their service
15 contracts add a provision noting that none of the
16 delivery trucks can in fact access the property
17 except from Grosvenor Lane and from Rockville Pike
18 or on Georgetown Road, via Grosvenor?

19 A I -- I was not aware.

20 Q Uh-huh.

21 A But my bigger concern is the visitors
22 using cars.

1 Q And do you have -- what is your estimate
2 or do you have any -- do you have a traffic
3 background?

4 A No, I do not. I do not. It's just based
5 on the current amount of traffic on our street
6 versus it -- it will increase. It has -- it has to.
7 Whether it's by a small amount, albeit.

8 Q Uh-huh, right.

9 A Or it's not going to not increase. And to
10 no fault of the applicant. There's also -- they
11 haven't moved in yet, but the town homes that are
12 now at the bottom of the street, and I believe it's
13 11 free standing homes, we are about to get a larger
14 influx, because those people, while their entrance
15 may be on Grosvenor Lane, but the quickest way to
16 get to Grosvenor is to cut through our neighborhood.
17 That's not your fault. It has nothing to do with
18 the applicant. But it's a consideration that we are
19 about to have more than a hundred families, assuming
20 that they're families, but they are residents, and
21 the fastest way to get to your house is -- and to
22 avoid the traffic light in the middle of rush hour

1 is to cut through my neighborhood.

2 HEARING EXAMINER: Okay. Ms. Harris,
3 would you kindly put 72 up or a surrounding
4 area, just so I can --

5 MS. HARRIS: -- fortunately our
6 surrounding neighborhood map (inaudible) we
7 have. This one. We sort of anticipated that
8 may come up. This is -- we don't have it
9 enlarged. This is 34 A.

10 HEARING EXAMINER: Okay. Okay. I think I
11 gave the exhibits to you.

12 MS. HARRIS: You did, but the only
13 exhibits. These are the ones that were
14 resubmitted --

15 HEARING EXAMINER: -- oh, oh, oh.

16 MS. HARRIS: -- so the original, 34 A,
17 which is full size, would be --

18 HEARING EXAMINER: -- in my file.

19 MS. HARRIS: Yes.

20 HEARING EXAMINER: And I'm gonna take a --
21 just nobody go anywhere. I'm gonna go off the
22 record for two minutes and we'll be right back

1 on, because I thought with the revised plans we
2 wouldn't -- I didn't expect additional
3 testimony today --

4 MS. HARRIS: -- nor did we.

5 HEARING EXAMINER: So --

6 (Brief pause.)

7 HEARING EXAMINER: Okay. I have 34 S,
8 which is surrounding neighbors. Well, there --

9 (Speaking out of hearing.)

10 MS. HARRIS: Oh.

11 HEARING EXAMINER: Am I making
12 (inaudible)?

13 MS. HARRIS: Yes. We agree.

14 HEARING EXAMINER: Okay. So what I'm
15 gonna ask -- I'm sorry, I didn't catch the
16 pronunciation. I got the spelling of your name
17 but I was -- of your last name, but I was so
18 focused on that. I didn't -- I don't remember
19 how to pronounce it.

20 MS. FARACLAS: Faracclas.

21 HEARING EXAMINER: Faracclas. Why don't
22 you approach.

1 Ms. Harris, if you wanna approach also, I
2 just like to -- you're -- just -- I just wanna
3 make sure I understand your testimony, okay?
4 Can you point out on this plan or just mark it
5 in -- well, no, I don't --

6 MS. FARACLAS: -- yes.

7 (Speaking out of hearing.)

8 MS. FARACLAS: Okay. So this is my home
9 right here.

10 HEARING EXAMINER: So your house is
11 outside this red boundary for the surrounding
12 neighborhood. It's outside this red boundary.

13 MS. FARACLAS: Yes.

14 BY HEARING EXAMINER:

15 Q Okay. So can you tell me about how many
16 homes in from Old Georgetown Road? One, two, three,
17 four, five, six.

18 A Six. So I'm six in.

19 Q So six east of Old Georgetown Road. Now,
20 describe for me the traffic you're -- you were just
21 --

22 A -- sure.

1 Q -- the circulation so I understand it.

2 A Okay. And please bear with me.

3 Q No, it's okay.

4 A I should have brought my -- these are my
5 not great glasses. Okay. So the traffic, this is
6 495.

7 Q Right. And this is north.

8 A Correct. So here's what typically
9 happens. And if you come straight down here, the
10 biggest traffic --

11 Q -- well, when you say -- you -- you
12 said -- you mean if you're proceeding from 495 North
13 on Old Georgetown?

14 A Either way. Doesn't particularly matter.
15 The -- the traffic light here is -- there's a
16 traffic light here, if I'm -- this is Manor Oak
17 Drive, and this is to get here --

18 Q -- okay.

19 A Now I'm just explaining.

20 Q No, I know --

21 A -- to go through --

22 Q -- just let me stop you, because we have a

1 transcript, if this goes up on appeal.

2 A Uh-huh.

3 Q And the transcript, when you say this --

4 A -- oh, I'm sorry.

5 Q It doesn't know what this is.

6 A Okay.

7 Q So you're talking there's two
8 intersections here, an intersection with what is
9 this cross street?

10 A This would be Old Georgetown Road and
11 Manor Oak and then over here is Ash.

12 Q And that's the --

13 A -- no, this is Lone Oak West. This is
14 Lone Oak West. This is the --

15 Q -- okay. So that's the first intersection
16 north of Lone Oak Drive?

17 A Correct.

18 Q Okay.

19 A The second intersection with a traffic
20 light is --

21 Q -- the second intersection north of Lone
22 Oak Drive and Old Georgetown is?

1 A Cheshire.

2 Q Okay.

3 A Forgive me for not knowing the drive.

4 Q That's okay. Now, if you can just
5 describe the circulation pattern using the street
6 names.

7 A Okay. The traffic that we see in our
8 neighborhood coming on Lone Oak Drive is typically
9 people trying to circumvent the two traffic lights
10 that we just discussed on Old Georgetown and Manor
11 Oak and Old Georgetown and Cheshire. They will --
12 there is no traffic light on Old Georgetown and Lone
13 Oak. They will turn right down Lone Oak Drive.

14 Q From the Beltway?

15 A From Old Georgetown Road.

16 Q Right.

17 A Whether they're coming from.

18 Q Oh, I see.

19 A The Beltway or from 270 over here, they
20 will cut through and then turn left on any
21 subsequent street that will get them to Grosvenor
22 Lane here, which could be either Hurst or Dickens or

1 Edward.

2 Q Okay.

3 A Or Fleming. And so that's -- they're --
4 they're gonna cut, depending on what their goal is,
5 whether it be to get to the metro or to get to any
6 subsequent neighborhood here without having to hit
7 these two traffic lights that I just mentioned.

8 Q Okay.

9 A And the bigger concern is -- and it has
10 nothing to do with the applicant, but because these
11 town homes, which have yet to --

12 Q -- going south of the property.

13 A Yes.

14 Q The Grosvenor whatever they're -- what are
15 they called?

16 MALE VOICE: Heights.

17 HEARING EXAMINER: Grosvenor Heights town
18 homes. Okay.

19 MS. FARACLAS: So they're not yet
20 reflected on this map, but there is an
21 entrance, I do know, on Grosvenor Lane to get
22 into the heights, and there is -- and -- and

1 what we were told is a necessary fire exit
2 because --

3 HEARING EXAMINER: -- you have to have two
4 exits.

5 MS. FARACLAS: -- (inaudible) two. The
6 traffic pattern has not been -- at least I am
7 not aware of the traffic pattern, whether you
8 will be able to turn left on Fleming and come
9 up, whether it -- I'm not aware of his -- the
10 signage. The roads have just been paved. So
11 we have these newer homes that are gonna be
12 here with X number of residents coming in and
13 out. And either coming up Lone Oak or going to
14 Grosvenor. But if you're going to one -- so
15 I'm just concerned that the traffic -- you can
16 access 495 and 270 (inaudible) -- I'm sorry, I
17 don't know the direction.

18 HEARING EXAMINER: Okay. South is the
19 bottom.

20 MS. FARACLAS: South, so east. They can
21 access that way as well, but it depends on
22 which way they're trying to go.

1 HEARING EXAMINER: Yes.

2 MS. CACHO: So that is my concern.

3 HEARING EXAMINER: Okay.

4 MS. CACHO: Is the volume coming from the
5 heights. And then if we add another property
6 and the visitors that would be coming. My --
7 I'm not as concerned with the trucks. Frankly,
8 they would not be able to come down Lone Oak
9 Drive, I don't believe. But my concern is the
10 visitors coming to the --

11 HEARING EXAMINER: -- okay.

12 MS. CACHO: -- the (inaudible) property
13 and the visitors that have yet -- the residents
14 that have yet to be reflected, and quite
15 frankly, house guests that would be coming to
16 this property.

17 HEARING EXAMINER: Right. Okay.

18 MS. CACHO: Which have not been -- I'm not
19 aware of any traffic patterns and how right and
20 left, no left turn signage that going up for
21 either facility to exit up.

22 HEARING EXAMINER: Okay. Thank you. That

1 helps me understand your concerns.

2 MS. FARACLAS: And if I may also?

3 HEARING EXAMINER: Yes.

4 MS. FARACLAS: Right now it is a -- I
5 believe that they are in the process of
6 adjusting this, but the bus stops in the
7 morning and letting out in this --

8 BY HEARING EXAMINER:

9 Q -- the school bus stops?

10 A The school bus stops. There is no
11 sidewalk on Lone Oak Drive. I believe it does -- it
12 starts at Dickens. There is no sidewalk here.
13 However, most of these bus stops, mine, and I can
14 name one other on Edward, there are over 20 children
15 just for the elementary school buses. There is no
16 sidewalk.

17 Q Okay.

18 A So it's when they're getting off, when
19 they're getting on, and because I'm not gonna let my
20 child walk by himself, there's the parents standing
21 there as well. So -- and that has to do with just
22 overcrowding in the schools.

1 Q I understand.

2 A It's a separate matter, but it's --

3 Q -- yeah, that's --

4 A -- the bus stops in the morning and the
5 subsequent schools getting out at different times.

6 Q I understand.

7 A So there's a lot of kids walking in the
8 streets. I -- and this is for my particular side,
9 there's no -- on Hurst and Greenlawn I believe is
10 our bus stop and -- yes.

11 Q (Inaudible.)

12 A Hurst -- I'm sorry, Hurst and Greenlawn,
13 yes. That's our bus stop, and there is no sidewalk
14 there on Hurst as well. So -- and we have 20
15 children for the elementary school bus.

16 Q Uh-huh.

17 A And subsequent parents standing, quite
18 frankly, and we're all standing in the street. Or
19 on -- some on the --

20 Q -- understood.

21 A -- property. So.

22 Q Okay.

1 A And again, it's just many factors that
2 have nothing to do with the applicant, but
3 unfortunately what I can only imagine is if there
4 are more houses there, there will be children.
5 Granted they will be at subsequently lower --

6 Q -- oh, you're talking about Grosvenor.

7 A If they're on this property, proposed
8 property that -- the heights, not yours, obviously,
9 there will be children -- I'm assuming that there
10 will be more children and bus stops and there's a
11 bit of crowding, less sidewalks. So just a concern
12 that I --

13 Q -- I understand.

14 A (Inaudible.)

15 HEARING EXAMINER: I understand. All I
16 can do in this hearing is address the potential
17 traffic from the facility, but I -- I
18 understand your concern, and you may have come
19 to the right day because I'm gonna ask Ms.
20 Harris if she has any questions of you, and
21 then we're gonna get to the traffic issue, all
22 right?

1 So Ms. Harris, do you have any questions?

2 BY MS. HARRIS:

3 Q Yes.

4 Approximately what time does the bus
5 stop come -- are the kids at the bus stop in the
6 morning?

7 A The elementary school bus for Hurst and
8 Greenlawn comes at 8:22.

9 HEARING EXAMINER: Approximately.

10 MS. FARACLAS: And the middle school bus
11 comes at 7:30.

12 BY MS. HARRIS:

13 Q Okay. And how about drop off in the
14 afternoon? Approximately is fine.

15 A The North Bethesda Middle School bus is --
16 I should say that that bus stop that I'm
17 referencing, my son gets off at Old Georgetown and
18 Manor Oak and therefore has to walk down Lone Oak
19 Drive to get to my home, no sidewalks, comes at
20 3:20. And the elementary school bus is 3:35 at
21 Greenlawn and Hurst.

22 Q Okay.

1 A Approximately.

2 Q That's okay, that's fine. Thank you. And
3 do you -- and is there a school bus on the weekends?

4 A No, there is not.

5 Q Okay. And would it surprise you that most
6 the visitors come during the weekend?

7 A No.

8 Q And would it also surprise you that most
9 visitors are not coming in the 7:30 to 8:30 period
10 in the morning? Monday through Friday?

11 A Actually (inaudible).

12 Q And do you have any -- do you have any
13 knowledge of the operations of an assisted living
14 facility, beyond your own personal experience?

15 A No, (inaudible).

16 MS. HARRIS: Okay. Thank you. No more
17 questions.

18 HEARING EXAMINER: Okay. Anything else?
19 Okay. Thank you very much. You're welcome to
20 stay. We do have the traffic expert here. And
21 so we'll -- we're all get -- we will all get
22 educated. Ms. Harris?

1 MS. HARRIS: Yes. So --

2 HEARING EXAMINER: -- is your next
3 witness.

4 MS. HARRIS: Our next and final direct
5 witness --

6 HEARING EXAMINER: -- witness.

7 MS. HARRIS: -- is Mr. Lenhart.

8 HEARING EXAMINER: Okay.

9 MS. HARRIS: And --

10 HEARING EXAMINER: -- okay. Raise
11 (inaudible) do you solemnly affirm under
12 penalties of perjury that the statements you're
13 about to make are the truth, the whole truth,
14 and nothing but the truth?

15 MR. LENHART: I do.

16 HEARING EXAMINER: Okay.

17 MS. HARRIS: And Mr. Lenhart has testified
18 many times as an.

19 HEARING EXAMINER: Oh, yes.

20 MS. HARRIS: Expert in traffic
21 engineering.

22 HEARING EXAMINER: Yes, he has.

1 MS. HARRIS: So unless there are any
2 questions, I'd like to have him qualified as
3 such.

4 HEARING EXAMINER: Okay. I am gonna
5 qualify him based on your past.

6 MR. LENHART: Thank you.

7 HEARING EXAMINER: Expert qualifications
8 as an expert in -- are you traffic engineering
9 or traffic transportation planning?

10 MR. LENHART: Both.

11 HEARING EXAMINER: Both.

12 MR. LENHART: Yes.

13 HEARING EXAMINER: In traffic engineering
14 and traffic transportation planning.

15 MR. LENHART: Thank you.

16 HEARING EXAMINER: Okay. Thank you.

17 BY MS. HARRIS:

18 Q Okay. So, Mr. Lenhart, have you prepared
19 traffic reports and provided expert testimony in
20 connection with residential care facilities other
21 than the subject (inaudible) matter?

22 A Yes, I have.

1 Q And which ones were those or most
2 recently?

3 A The artist facility on River Road and
4 there were two facilities in Olney as well on
5 Georgia Avenue a few years before that.

6 Q Okay. And are you familiar with the
7 zoning ordinance requirement that the applicant must
8 satisfy which requires the conditional use
9 application not cause undue harm with respect to
10 traffic and that there be adequate traffic capacity
11 to accommodate the use?

12 A Yes.

13 Q And what are the traffic related inherent
14 characteristics associated with an assisted living
15 facility? Are you aware of those?

16 A The inherent characteristics?

17 Q Yes.

18 A Yes. I believe the parking facilities,
19 (inaudible) trips by employees, deliveries, staff,
20 and visitors.

21 Q And would that also include -- you
22 mentioned deliveries and you mentioned trash,

1 correct?

2 A Did not, but yes, trash would be another
3 one, yes.

4 Q Okay. And are you familiar with the
5 subject conditional use application?

6 A I am.

7 Q Can you please describe what your
8 responsibilities were in this regard?

9 A Yes. We prepared a traffic statement for
10 the project, which involves an evaluation of the two
11 components. One is the local area transportation
12 review, and the other is the transportation policy
13 area review. And the local areas review, which is
14 also referred to as LATR, we conducted a trip
15 generation analysis for the site to determine how
16 many trips it generates in the peak hours. If it
17 generates 30 or more trips, it's subject to a
18 traffic impact study to test the adjacent
19 intersections. If it's less than 30 peak hour
20 trips, then it is satisfies the LATR test and no
21 additional analysis is needed.

22 HEARING EXAMINER: Is it 30 or less or is

1 it less than 30?

2 MR. LENHART: Less than 30 is basically
3 exempt from the LAT review.

4 HEARING EXAMINER: I couldn't remember.
5 And can you refresh my memory on what the a.m.
6 peak hours? Is it 6:30 to 9:30 still?

7 MR. LENHART: 6:30 to 9 -- so when we do a
8 traffic study.

9 HEARING EXAMINER: Yeah.

10 MR. LENHART: We do counts from 6:30 to
11 9:30 in the morning.

12 HEARING EXAMINER: Yes.

13 MR. LENHART: And 4 to 7 in the evening.
14 And then we determine of those two three hour
15 periods, what is the -- the peak 60 minutes.

16 HEARING EXAMINER: Okay.

17 MR. LENHART: In this case, because the
18 site generates fewer than 30 peak hour trips,
19 it's exempt from the LATR analysis. And -- and
20 we do no -- no traffic counts, no analysis.

21 (Inaudible) qualitative assessment of the road
22 pipes, the circulation. The -- the

1 transportation policy area review, which is
2 known as the TPAR. The project is in the North
3 Bethesda policy area, which is adequate for the
4 roadway test, and fails the transit test.
5 Therefore, it requires a -- the 25 percent TPAR
6 mitigation fee, which is an additional
7 25 percent of the transportation impact tax.
8 And that -- that basically is the extent of
9 what we look at for the LATR and the TPAR
10 analysis of the statement.

11 BY MS. HARRIS:

12 Q And based on Mr. Teeter's testimony of the
13 number of employees -- well, let me ask. Are you
14 familiar with the number of employees that are
15 anticipated?

16 A Yeah.

17 Q For this project?

18 A Yes.

19 Q And can you describe what your conclusions
20 were based on?

21 A Yes.

22 Q On operational aspects of this facility?

1 A So the -- with the site with 104 beds and
2 with -- we looked at it in several different ways.
3 One, the ITE or the Institute for Transportation
4 Engineers has a trip generation manual for assisted
5 living facilities. And it's -- that's a nationally
6 recognized publication that has hundreds of
7 different land uses in it, assisted living being one
8 of them. And it's based upon empirical traffic
9 studies at existing assisted living facilities where
10 they count traffic in and out throughout the peak
11 hours, and they determine based upon the number of
12 beds how -- how many peak hour trips they're
13 generating.

14 HEARING EXAMINER: And do those empirical
15 studies, do they include service people?

16 MR. LENHART: Yes.

17 HEARING EXAMINER: Visitors, you know, the
18 --

19 MR. LENHART: -- trash delivery.

20 HEARING EXAMINER: -- person who runs the
21 beauty salon, that kind of stuff?

22 MR. LENHART: Yes. That's all included in

1 there. It's -- the way ITE breaks it down --
2 so there's -- staff has been looking at it in
3 terms of number of staff.

4 HEARING EXAMINER: I know, I saw that.
5 I -- okay. Go ahead.

6 MR. LENHART: ITE looks at it in terms of
7 number of beds. And if you think of it in
8 trying to correlate the two, if you have a 50
9 bed facility or a hundred bed facility or a 200
10 bed facility, you're gonna have to increase or
11 decrease your staff, your service requirements,
12 your -- your deliveries, and everything
13 according to the number of beds. So all of
14 those services, if you had more beds, those
15 services go up a little bit. If you have less
16 beds, they go down a little bit. And so
17 there's a direct correlation between the number
18 of beds and the number of trips. And that's
19 what the ID -- ITE shows. And it does not say
20 in the ITE that 104 bed facility has the exact
21 same staffing characteristics, but it's implied
22 in the way these things work that it's a pretty

1 fair consistency from place to place. And so
2 the ITE data indicates that there would be a
3 total of 15 trips in the morning peak hour, 23
4 trips in the evening peak hour.

5 We also looked at it in terms of the
6 staffing, and that there is to be a -- yes, 7
7 to -- 7 a.m. to 3 p.m. is the main daytime
8 shift and there'll be 25 employees that arrive
9 at 7 and depart at 3 or, you know, shortly
10 before or thereafter. That is the largest of
11 the three shifts that -- then there's the
12 evening shift, it's 3 p.m. to 11 p.m. which is
13 15 employees, and overnight 11 p.m. to 7 a.m.
14 is five employees. And then there's a
15 administrative staff or others that are five
16 employees that come in between 9 a.m. and
17 5 p.m. And so really the -- the peak usage
18 here is 7 a.m. to 3 p.m.

19 (Buzzing noise.)

20 MR. LENHART: Sorry. And so you have 25
21 people coming in at seven, five -- or coming in
22 before seven, five leaving after seven. What

1 the -- what that does not take into effect --
2 into account is that there are -- there's car
3 sharing, there's ride sharing, there's, you
4 know, car pool and transit. Some people may
5 walk. Now, we're not suggesting there be a
6 dramatic, you know, ITE says 15 trips. I think
7 it'll likely be a little more than that morning
8 peak hour, but it would not be 30 trips.

9 HEARING EXAMINER: Well, I guess my
10 question is when I have up what's going on in
11 the a.m. peak hour.

12 MR. LENHART: Uh-huh.

13 HEARING EXAMINER: All right. I see the
14 25 or I see five leaving. That's five, right.

15 MR. LENHART: Uh-huh.

16 HEARING EXAMINER: Then I see 25 coming
17 in. That's 30. And then I see five managers.
18 That's 35.

19 MR. LENHART: But that's not until
20 9 o'clock. So if we -- if we take a look at
21 7 a.m.

22 HEARING EXAMINER: Yeah, but when you

1 submit your traffic statement, aren't you
2 saying it doesn't generate more than 30 trips
3 in the peak period?

4 MR. LENHART: Peak hour. So peak -- 60 --
5 so we look at a three hour period to determine
6 what the actual peak hour is on Old Georgetown
7 Road and these study intersections. We wanna
8 find out what the -- the worst one hour period
9 is at those intersections, so that's what we
10 study, but then when we looked at the site, we
11 only look at how many trips it generates in one
12 60 minute period. So.

13 HEARING EXAMINER: So you've got 30 coming
14 in, say, around seven. I mean, 25 coming in
15 and five leaving.

16 MR. LENHART: Yes.

17 HEARING EXAMINER: All in the proximity of
18 seven.

19 MR. LENHART: Yes.

20 HEARING EXAMINER: Okay. So how do we
21 know that these -- do you have any -- I think I
22 had one assisted care living that actually had

1 done a survey, how many employees took transit.
2 How do we -- I mean, you're right. I guess
3 you're saying you're right on the edge.

4 MR. LENHART: Yes.

5 HEARING EXAMINER: So.

6 MR. LENHART: I understand. And I've had
7 many, many projects that have been right on the
8 edge that have been 29 trips, and, you know,
9 there's the threshold is 30, and so.

10 HEARING EXAMINER: So you have to be 29 or
11 fewer.

12 MR. LENHART: 29 or fewer, yes. And I've
13 had many cases that have come in at 29 or 28,
14 in that range, and it's not that, well, you're
15 getting close so now we need to look at it.
16 It's either you're there or you're not there.
17 And while --

18 HEARING EXAMINER: -- but you're there
19 according to this.

20 MR. LENHART: We're -- we're there as it
21 relates to people, not as it relates to
22 vehicles. So there's -- there's person trips

1 and there's vehicle trips. The -- the
2 guidelines --

3 HEARING EXAMINER: -- which -- the ITE
4 guidelines or the LATR?

5 MR. LENHART: The LATR guidelines.

6 HEARING EXAMINER: Uh-huh.

7 MR. LENHART: It's based upon vehicle
8 trips, not personal trips. And so the -- the
9 fact that ITE for this size facility says that
10 it's less than 30, it's significantly less than
11 30. And ITE, the -- it does not have data. It
12 doesn't specify, but the fact is that it takes
13 into account car pooling, transit, people
14 walking. That's in those numbers, but it -- it
15 doesn't have specific surveys at each place
16 saying this place had --

17 HEARING EXAMINER: -- I see what you're
18 saying.

19 MR. LENHART: -- a ten percent --

20 HEARING EXAMINER: -- I see what you're
21 saying.

22 MR. LENHART: -- transit or, you know,

1 5 percent, call it (inaudible) or anything.
2 And we did have extensive discussions with Ben
3 Axler, park and planning transportation staff
4 on this issue. And, you know, we discussed the
5 fact that 25 in, five out is 30. But that's 30
6 person trips, not vehicle trips. And it was
7 comfortable and reflects in -- in the staff
8 report.

9 HEARING EXAMINER: And what I hear you
10 saying is that the ITE rates account for the
11 transit usage.

12 MR. LENHART: It accounts for everything.
13 It accounts for the things --

14 HEARING EXAMINER: -- what's actually in
15 these facilities.

16 MR. LENHART: Exactly.

17 HEARING EXAMINER: Okay.

18 MR. LENHART: The deliveries, the
19 visitors, the -- the cooks, the --

20 HEARING EXAMINER: -- right.

21 MR. LENHART: -- medical staff. So it
22 adds that in, but it also accounts for transit,

1 car pooling, those kind of things which get
2 subtracted out. So it has everything in that
3 empirical data.

4 BY HEARING EXAMINER:

5 Q Now, we have other facilities that move
6 their shift outside of peak hour. 6 to 2. That was
7 the artist facility solution. Do you wanna comment
8 on that?

9 A I know that there have been cases where
10 that's done. I think it was in those cases
11 proffered because of certain situations. I would
12 say even in those cases it didn't need to be
13 proffered. It doesn't need to be proffered here.
14 We're -- we are, in any way we look at this, we're
15 below 30 vehicle trips per hour.

16 Q Because of the transit usage.

17 A Because -- that, car pooling and just the
18 way -- the way the facilities work. And so I don't
19 think it's necessary.

20 Q Uh-huh.

21 A You know, there was some discussion about
22 school and school buses and pick up and drop off and

1 those times that were mentioned about -- would not
2 conflict with the 7 o'clock.

3 Q Right.

4 A Time, shift change. Nor would they
5 conflict with the 3 o'clock, because anybody that
6 gets off at 3 should be long gone before I think it
7 was 3 -- 3:20.

8 Q Right.

9 A 3:25. I mean, the majority of those folks
10 should be out and gone. And the inbound people at
11 3 o'clock would be already be there as well.

12 HEARING EXAMINER: Okay. All right.

13 BY MS. HARRIS:

14 Q When you say that the -- the maximum
15 number of trips is well below, can you refresh --
16 just restate what the maximum anticipated is?

17 A Sure.

18 Q For the a.m. peak, a.m. peak?

19 A It's 15 in the a.m. peak based upon the
20 ITE numbers, which, you know, it would bring maybe a
21 little higher than that, but I don't think it's
22 gonna be significant -- I believe the ITE number's

1 pretty reasonable.

2 Q And that number is dependent or assumes,
3 as the hearing examiner pointed out, she sort of
4 stole my question, but it -- it -- it -- calculation
5 includes the fact that some of those employees will
6 take public transportation or get to work other than
7 a single occupancy vehicle?

8 A Yes.

9 Q And so in that regard, can you discuss the
10 proximity of public transportation in the site?

11 A Yes. There -- bus Route 6 fronts the
12 project or the property on Grosvenor -- Grosvenor
13 Lane to the east of Fleming Lane, and Route 6 is
14 a -- a loop cross that goes from -- bear with me.
15 It goes from park side to the Montgomery Mall
16 Transit Center, and then loops back and forth and
17 that has 30 minute head ways, approximately 30
18 minute.

19 Q And does park side go by the -- the
20 Grosvenor Metro?

21 A Yes. It does. That's one of (inaudible)
22 stops. So thank you.

1 Q Uh-huh. And what time is that bus
2 anticipated to be -- when -- when are its stops in
3 front of the facility? Approximately.

4 A Approximately 6:45 a.m. for one of the
5 stops and 6:54 a.m. for another stop. And then
6 7:14 a.m. and 7:24 a.m. So it's got two groupings
7 right before and right after the morning shift
8 change.

9 Q And you're saying that's increasing the
10 likelihood that people will -- staff will use
11 transit to get there.

12 A Or could use it. It makes it convenient,
13 yes.

14 Q And so if in fact the a.m. -- if the --
15 the -- if the shift time were made earlier, to
16 6 a.m., is -- at what time does that bus start
17 running?

18 A No, it doesn't start until 6:17 a.m. is
19 the -- the first time that it stops in front of the
20 site and then again at 6:25. So it would miss that
21 shift change. It would make it inconvenient for
22 people to use it.

1 Q So, in fact, the -- the ability to capture
2 as many people as possible potentially using that
3 bus coincides with the --

4 A -- 7 o'clock.

5 Q -- the suggested peak --

6 A -- yes.

7 Q -- or shift.

8 A And the other thing I would mention as
9 well about ride sharing or car pooling.

10 Q Uh-huh.

11 A For this type of use where you have a
12 shift, 7 to 3, makes it more convenient, more
13 reliable for two employees to -- or two or more to
14 say let's ride together because I know -- we -- all
15 we know, we both start at 7, we both get off at 3,
16 versus an office building or an office where
17 somebody might have to stay late or get in early to
18 do something. You don't have that strict shift on
19 and off time. So improves the likelihood of ride
20 share.

21 Q Uh-huh. And when you think about
22 additional trips, the hearing examiner mentioned for

1 instance the beauty salon. Any concern on your part
2 that they would be coming during the a.m. peak hour?

3 A No. I would think that would be later.
4 Yeah, not -- 7 a.m. is not likely for those types of
5 things, this type of facility.

6 Q So that the only anticipated trips during
7 the a.m. peak hour are likely the employees?

8 A Correct.

9 Q Is that correct?

10 A Correct.

11 HEARING EXAMINER: Okay. What about the
12 testimony we just heard, and I know that you
13 know we just heard it, so you haven't had an
14 opportunity to think it through, but what
15 impact in your opinion would this have on Lone
16 Oak Drive?

17 MR. LENHART: I believe it would be really
18 negligible. I mean, we're -- we're talking
19 about, again, 15 morning peak hour trips, 23 --
20 I think it was 23 evening peak hour trips.
21 Which is pretty low. You know, it's pretty
22 negligible. It is less than the LATR

1 threshold, which has been set as kind of a
2 measure to say if -- if it's less than that,
3 less than the 30 peak hour trips, then --

4 HEARING EXAMINER: -- it's de min -- it
5 will have a de minimis impact.

6 MR. LENHART: Yes.

7 HEARING EXAMINER: Is that your -- what
8 you're saying?

9 MR. LENHART: Maybe not de minimis, but
10 it's low enough that you really don't have to
11 take a hard look at it. When it gets above 30
12 trips, that's when they start saying, well,
13 let's take a little harder look at what some of
14 the local (inaudible) impacts might be.

15 BY MS. HARRIS:

16 Q Do you have a sense of people exiting or
17 entering this site that --

18 A -- yeah.

19 Q -- which from the -- so they -- there's
20 one access point on Grosvenor Lane.

21 A Uh-huh.

22 Q So they either need to come in and -- they

1 come in from the east or they come in from the west.

2 Have you had a chance to evaluate trip distribution?

3 A Other than after the discussion this
4 morning, just kind of looking at the area and kind
5 of put some rough thoughts to it, you know, anybody
6 to and from the 355 area, North Bethesda, Rockville,
7 or down 355, I think you'd probably have a pretty
8 good distribution in that direction. You may have
9 some then that go over and north on Old Georgetown
10 Road. I would think that they would use the
11 Cheshire intersection and, you know, you may have
12 some that would go south of Old Georgetown Road. In
13 terms of the overall number of trips, it would just
14 be, you know, smaller percentage of that, 'cuz it's
15 gonna distribute out from the site.

16 Q But -- but in terms of real numbers, is it
17 safe to assume 50 percent turn out the site and go
18 east and 50 percent turn out and go west?

19 A That would be a reasonable assumption, I
20 think.

21 Q So if we have 15 percent -- 50 percent of
22 15, how many trips are you talking about in the peak

1 hour going east? West, excuse me. Approximately.

2 A So, you know, seven or eight in the
3 morning and 12 or 13 in the evening.

4 Q And is that seven and eight over a one
5 hour period?

6 A Yes. And not all of those would go south.
7 Some of those would go north. So then maybe you're,
8 you know, three or four trips in the morning and
9 five or six trips in the evening.

10 HEARING EXAMINER: No, I think that on
11 Thursday someone testified -- maybe it was the
12 owner or the applicant -- that the peak -- no,
13 the -- the typical visiting hours are at after
14 dinner on -- one of the peak visiting hours
15 would be after dinner on -- during the week.
16 And you weren't here for that testimony, and
17 maybe -- would that affect -- now, I know the
18 staff change at that time is much lower. Well,
19 you don't have a staff change at that time.

20 MR. LENHART: There's no staff change at
21 evening peak hour.

22 HEARING EXAMINER: In your opinion, would

1 the traffic from -- because I think it was
2 mentioned today that the visitor traffic would
3 have an impact. And I know you've only heard
4 this testimony just now, so I guess my question
5 is in your opinion, what's the impact of the
6 visitors, assuming, you know, they come?

7 MR. LENHART: Sure.

8 HEARING EXAMINER: And if you don't have
9 the information, I can defer to the applicant.
10 He may have more operational information about
11 the visitors, but.

12 MR. LENHART: I could speak to it in terms
13 of the overall use, and -- and I believe the
14 applicant probably speak to specifically the
15 visitor piece of it, but the ITE trip
16 generation information does -- if you look at
17 the morning and the evening peak hour, it says
18 the evening peak hour is a little higher than
19 the morning, and I think that that's because of
20 the visitors. That would be my -- my take on
21 it in terms of analyzing the technical data.

22 HEARING EXAMINER: Okay.

1 MR. LENHART: So I -- I would agree that's
2 when most visitors are gonna come. That's in
3 the ITE data and it was I think 23 peak hour
4 trips is -- is what --

5 HEARING EXAMINER: -- okay.

6 MR. LENHART: -- we would be projecting.

7 HEARING EXAMINER: All right.

8 BY MS. HARRIS:

9 Q And 'cuz there's not a shift change during
10 that period of time, is it safe to assume that all
11 23 or the majority of those 23 are attributable to
12 visitors?

13 A The majority, yes. We do have I think the
14 five.

15 Q Uh-huh.

16 A Administrative.

17 Q Managerial.

18 A They get out at five (inaudible), but,
19 yeah, so the majority would be the visitors.

20 Q And is it possible that some of those
21 visitor trips are what's referred to as pass-by
22 trips?

1 A That's possible, yes. That, you know,
2 people.

3 HEARING EXAMINER: Well, you know --

4 MR. LENHART: -- or diverted.

5 HEARING EXAMINER: -- maybe diverted on
6 the way home from work.

7 MR. LENHART: On the way home, yeah.

8 HEARING EXAMINER: But I think it's a
9 little speculative to say that they're
10 pass-bys. But anyway. You're gonna get a
11 chance.

12 MS. CACHO: I wanted to know what pass-by
13 was, I'm sorry.

14 MR. LENHART: Oh.

15 HEARING EXAMINER: Can you --

16 MR. LENHART: Pass-by means -- so if
17 you're -- let's say one of the best cases is a
18 gas station. You get in your car, you drive to
19 work and there's a gas station right along the
20 road. You need gas, you stop in to get gas,
21 and then you go. So you -- you -- you stop
22 into the site as you pass by and then you go on

1 to work.

2 MS. CACHO: Okay. Thank you.

3 MR. LENHART: So it's not a new trip. It
4 just captures you from the existing
5 (inaudible).

6 MS. CACHO: That's -- okay. Thank you.

7 HEARING EXAMINER: You're gonna become a
8 traffic engineer after this.

9 MS. CACHO: I am an engineer myself.
10 (Inaudible) traffic.

11 BY MS. HARRIS:

12 Q We heard from the opponents that the --
13 there was concern about the level of traffic that
14 may be on these roads as a result of the Grosvenor
15 Heights project, and then the contributing
16 contribution that our project would make
17 subsequently.

18 A Uh-huh.

19 Q Do you have any information in terms of
20 that Grosvenor Heights project and -- and the amount
21 of available capacity to accommodate that project?

22 A Yes, I do. I have the staff report from

1 the Grosvenor Heights preliminary plan, site plan
2 number 820130130. And that's from January of 2014.
3 And they -- the Grosvenor Heights project did
4 generate more than 30 peak hour trips and was
5 required to do a traffic impact study. They looked
6 at a number of intersections here. Grosvenor Lane
7 at Cheshire Drive. Grosvenor Lane at Fleming
8 Avenue. Grosvenor Lane and their site driveway.
9 Old Georgetown Road at Cheshire Drive. Old
10 Georgetown Road at the westbound I-495 ramps, which
11 would be the outer loop rather than at Old
12 Georgetown Road. Old Georgetown Road at Manor Oak
13 Way, and Rockville Pike at Grosvenor Lane. All of
14 them --

15 HEARING EXAMINER: -- so two of those were
16 the intersections that were mentioned this
17 morning.

18 MR. LENHART: Yes. And --

19 HEARING EXAMINER: Okay. Go ahead.

20 MR. LENHART: They did not study Old
21 Georgetown Road at Manor Oak, which has Lone
22 Oak as the west leg.

1 HEARING EXAMINER: Oh, okay.

2 MR. LENHART: That was one -- that was
3 discussed at your desk this morning. They did
4 not study that one. However --

5 HEARING EXAMINER: -- that's -- that's not
6 signalized, correct?

7 MR. LENHART: That one is signalized.

8 HEARING EXAMINER: Oh.

9 MR. LENHART: The one at Manor Oak.

10 HEARING EXAMINER: Oh, okay.

11 MR. LENHART: Old Georgetown at Manor Oak
12 is signalized.

13 HEARING EXAMINER: Do you wanna --

14 MR. LENHART: -- want me to come up?

15 HEARING EXAMINER: Yeah, I -- you're
16 welcome to come up, too.

17 MR. LENHART: Yes.

18 HEARING EXAMINER: I just wanna make sure
19 I understand and not have to wait for the
20 transcript to figure it out.

21 (Speaking out of hearing.)

22 HEARING EXAMINER: No, no. I don't want

1 you to testify right now. You're welcome to

2 come and see what he says, okay. So --

3 MR. LENHART: -- all right. So --

4 HEARING EXAMINER: -- is it -- what about
5 this one? What is this one?

6 MR. LENHART: That is Manor Oak.

7 HEARING EXAMINER: Okay.

8 MR. LENHART: This is Manor Oak and this
9 is Lone Oak. So.

10 HEARING EXAMINER: Oh, oh, okay.

11 MR. LENHART: So (inaudible) Georgetown
12 and then the Lone Oak Drive, I believe.

13 MS. HARRIS: That's Lone Oak East.

14 MR. LENHART: Yeah. She lives off of this
15 one and --

16 HEARING EXAMINER: -- the Lone Oak East.
17 Okay. So the Manor Oak -- okay. That's where
18 I was getting confused, 'cuz this is Lone Oak.
19 When I say this, it's the second intersection
20 north of Lone Oak and Georgetown, and it has
21 Manor Oak on one side and Lone Oak on the
22 other. So that's where I was getting confused.

1 So the one with Manor Oak, Lone Oak is
2 signalized and Cheshire and Old Georgetown is
3 signalized. But not where Lone Oak East comes
4 from Old Georgetown Road.

5 MR. LENHART: That's correct. So --

6 HEARING EXAMINER: -- okay.

7 MR. LENHART: -- if you're heading -- just
8 for the record, heading from the Beltway north,
9 you -- you start at the ramps from the Beltway
10 at the outer loop. That was in the Grosvenor
11 Heights intersection or study. That is
12 signalized. As you head north, Kings Wood Road
13 is not signalized. Lone Oak Drive East is not
14 signalized. Continue north, Lone Oak Drive
15 West and Manor Oak Drive is signalized.

16 HEARING EXAMINER: Okay.

17 MR. LENHART: And then heading north at
18 Cheshire is signalized.

19 HEARING EXAMINER: Okay. I -- that there
20 were too many Manor Oaks. I just wanted to
21 make sure -- and Georgetown. I wanted to make
22 sure exactly which ones you were referring to.

1 So I appreciate your -- your all coming up.
2 And did you finish -- you were listing all
3 these intersections.

4 MR. LENHART: Yes.

5 HEARING EXAMINER: And so continue in your
6 testimony.

7 MR. LENHART: So all of these
8 intersections passed the -- the LATR analysis
9 with significant surplus capacity. And the --
10 the one that was not in the study was the Old
11 Georgetown at Lone Oak East, the un-signalized
12 intersection, was not in this study. But they
13 have two intersections that bracketed that.
14 One north at Lone Oak West and Manor Way.
15 Manor Oak Way. That -- that intersection is
16 operating in the morning peak hour a CLV of
17 1,301. Evening peak hour, CLV of 1,990.

18 HEARING EXAMINER: What's the limit in
19 that policy area?

20 MR. LENHART: North Bethesda policy area
21 is a 1,550.

22 HEARING EXAMINER: Okay.

1 MR. LENHART: And then if you go to the
2 south of Lone Oak East, the intersection there
3 was Old Georgetown at the I-495 westbound ramp.
4 That was projected to operate at a 1,263 in the
5 a.m. and 1,011 in the p.m. So there's -- north
6 and south of that intersection were
7 significantly under the policy area standard.
8 And then when you get into the neighborhood
9 itself, like Grosvenor Lane and Fleming Avenue,
10 that was projected to operate at 571 in the
11 morning and a 500 in the evening.

12 HEARING EXAMINER: Grosvenor and Fleming?

13 MR. LENHART: Yes.

14 HEARING EXAMINER: Now, but as (inaudible)
15 it -- well, that's another topic, but I'm gonna
16 ask you about it. Go ahead. Keep going. That
17 was a 560?

18 MR. LENHART: 571 in the morning and 500
19 in the evening. And so that that's just to
20 give an idea of the intersection's internal to
21 the neighborhood, that -- that they are
22 operating -- operating well below the threshold

1 for the policy area. When you get out on the
2 Old Georgetown, they're higher but there's
3 still significant surplus capacity.

4 HEARING EXAMINER: What -- okay. Just --
5 you may wanna tell her exactly what the
6 capacity -- I don't wanna take too much time,
7 but just while they're here, they can
8 understand what you're saying.

9 MR. LENHART: Sure. So.

10 HEARING EXAMINER: It doesn't mean you
11 don't experience delays, okay. So you go ahead
12 and just take a moment, if you can briefly
13 describe it.

14 MR. LENHART: Sure. So when we do a study
15 of an intersection, we use a critical lane
16 volume methodology, which is -- it's a very
17 simple mathematical formula. It looks at the
18 traffic volumes and all the approaches and the
19 number of lanes, and it -- it -- formula spits
20 out a result and it's a number. The North
21 Bethesda policy area has a threshold of 1550.

22 HEARING EXAMINER: And who sets that

1 threshold?

2 MR. LENHART: Park and planning or
3 (inaudible) council for the (inaudible) staging
4 policy.

5 HEARING EXAMINER: Uh-huh.

6 MR. LENHART: And so that's -- that
7 thread -- as you get into more rural areas,
8 they lower the policy, because they won't --
9 they don't wanna encourage congestion in rural
10 areas, so they make it a little more difficult.
11 When you get into more urban areas, they raise
12 the level. Because for -- the smart growth
13 thought is that in urban areas where there is
14 infrastructure, it's allowable to raise the
15 tolerance for a level of congestion. And so
16 1,550 is -- is the threshold. You will
17 experience some delay at those intersections,
18 but it's not a free flowing intersection.
19 You're gonna come up. You might -- during one
20 of the peak hour you might get through with
21 some delay on one cycle. You might have to sit
22 a second cycle for some approaches.

1 FEMALE VOICE: Do you have a number? I
2 mean, is it some delay, are you talking five,
3 ten, 15, 20? What some -- what some delay
4 means?

5 MR. LENHART: Well, if I try to translate
6 the 1,550 into a seconds of delay, there's
7 different methodologies, but I could kind of
8 say maybe an average of 50 seconds per vehicle
9 at a signalized intersection. And so if you
10 have a cycle length, the signal takes three
11 minutes to get through the cycle. You pull up
12 to the cycle and you may have to wait, you
13 know, if you get there right before the green,
14 you might be able to get through with no delay.
15 If you get there at the beginning of the red,
16 you may have to wait for a while. On average,
17 50 to 60 seconds per vehicle. That would
18 correlate.

19 HEARING EXAMINER: Now, I opened that up
20 just so that you would understand what he's
21 saying. It's beyond the scope of this hearing
22 to get into legislative policy about -- I'm

1 just clarifying this, about, you know, allowing
2 higher delays in urban areas and things like
3 that. What we're dealing with is the -- the --
4 the congestion levels are set externally to
5 this application.

6 FEMALE VOICE: Thank you.

7 HEARING EXAMINER: Okay.

8 BY MS. HARRIS:

9 Q I wanna focus again on the 23 hour -- the
10 23 peak hour in the p.m.

11 A Uh-huh.

12 Q Recognizing that some of the cars will
13 exit and enter the site from the west, some will
14 enter and exit from the east. Can you, in your
15 professional opinion, explain what does that mean in
16 terms of additional cars going eastbound on
17 Grosvenor -- excuse me, westbound on Grosvenor Lane
18 and westbound on another (inaudible)? Because
19 they've diverted off of Grosvenor, they're still
20 heading west but they've diverted. How many
21 additional cars in that peak area on both of those
22 roads, Grosvenor and Lone Oak, do you anticipate?

1 A So in the evening peak hours, 23 trips
2 during the peak hour, 13 of those are outbound. Ten
3 of those are inbound. So if we just take the
4 outbound and where he say maybe there's a 50/50
5 split east versus west and the 13 out would go down
6 to seven on west -- on Grosvenor Lane, which
7 translates to about one every six minutes, one
8 vehicle every six minutes. Now, assuming they all
9 stay on Grosvenor Lane, then that's one every six
10 minutes on Grosvenor Lane. If half of those decide
11 to use Lone Oak or Kingswood or, you know, some
12 other thing, then it -- then it would be reduced
13 based upon whatever that distribution might be. So,
14 I mean, even if you said half of them use Lone Oak,
15 you would end up with three or four per hour, which
16 is one every 20 -- 15 to 20 minutes.

17 Q And in your professional opinion, is an
18 additional car every -- one every 15 or 20 minutes
19 in the peak hour going to cause any adverse impact
20 to this neighborhood?

21 A No. I -- I don't think you would even
22 notice the -- the -- the increase. It's so small.

1 Q Thank you. I wanna switch gears for a
2 moment to an issue that came up on during the
3 hearing on Thursday, which has to do with the
4 Fleming Avenue and the potential of converting --
5 taking the proposed DOT section, which would involve
6 parking along the eastern portion of that right of
7 way for seven and a half feet and converting --
8 eliminating the parking within the paving section
9 and instead, for lack of a better word, filling that
10 in with landscaping. Are you familiar with that
11 proposal --

12 A -- uh-huh. Yes.

13 Q And I -- from a -- in your professional
14 opinion, from a safety aspect, can you comment on
15 whether that may -- whether you have any concerns
16 with respect to that proposal?

17 A So the 20 to 22 feet of paving that's out
18 there today I believe can easily handle the traffic
19 that's there. It's a safe section. Other than if
20 there's parking in that 20 to 22 feet, that parking
21 could block -- on street parking could block access
22 to emergency vehicles, fire trucks and things, which

1 may have a difficult time once you take 20 feet,
2 subtract out 6 to 7 feet for this parked car and now
3 you got a 13, 14 foot lane, and if there's two way
4 traffic on it, you know, fire truck or ambulance
5 could be in a situation where somebody's blocking
6 the road, somebody's gonna back up, and it just
7 slows down.

8 HEARING EXAMINER: But I thought the right
9 of way -- and I guess you have Exhibit 72 -- I
10 thought the right of way was wider than -- I
11 thought they were gonna widen Fleming Avenue
12 and put the parked cars in part of what has
13 been widened, leaving 20 feet of right of way.
14 Do you -- do you have Exhibit 72? I'm not
15 advocating one way or the other, but I am
16 trying to -- and I am gonna wait. I know
17 you're meeting with DOT today. Yeah, DOT. I'm
18 not advocating one way or the other.

19 MR. LENHART: Sure.

20 HEARING EXAMINER: I just want to --

21 MS. HARRIS: -- so the proposal, if I
22 could just clarify what it was. DOT's proposal

1 would be to widen the paving section 29 and a
2 half feet.

3 HEARING EXAMINER: Right.

4 MS. HARRIS: Take seven and a half feet
5 for the --

6 HEARING EXAMINER: -- for parking cars.

7 MS. HARRIS: -- (inaudible) west side and
8 then two 11 foot lanes. And what Mr. Cline was
9 advocating was to take that seven and a half
10 feet, which would have been for parking, and
11 fill it in with a landscape (inaudible).

12 HEARING EXAMINER: Okay.

13 MS. HARRIS: And so --

14 HEARING EXAMINER: -- so 29 minus seven --
15 so it -- okay. It leaves 22 feet. So what are
16 you saying? I mean.

17 MR. LENHART: So.

18 HEARING EXAMINER: What is it today? What
19 is it today?

20 MR. LENHART: It's about 20 feet, roughly.
21 20 feet paving today. And so my testimony was
22 taking about what's basically out there today

1 with 20 feet of paving.

2 HEARING EXAMINER: Yeah.

3 MR. LENHART: That could be safe as long
4 as there is no on street parking occurring.
5 Now, if parking were restricted, then that
6 really -- Mr. Cline's suggestion would be fine
7 and safe because you have, you know, 20 feet
8 minimum, 20 to 22 feet curb to curb, which
9 meets the fire access requirements, and you'd
10 have a 10 to 11 foot lanes in each direction,
11 which would be fine and no on street blocked
12 parking. So that's Mr. Cline's proposal. I
13 believe that would be safe. I also belief that
14 DOT decides they would rather do the 29 and a
15 half feet.

16 HEARING EXAMINER: Yeah.

17 MR. LENHART: With 11 foot lanes plus the
18 seven and a half foot parking, I believe that
19 would be safe. I don't want --

20 HEARING EXAMINER: -- is the Kingsview
21 private roads?

22 MS. HARRIS: Is the what?

1 HEARING EXAMINER: Is -- not Kings Road,
2 Grosvenor. Grosvenor Heights. Are they
3 private roads, to your knowledge? I guess I'm
4 just wondering, you know, the community -- I
5 understand Mr. Cline's concern about screening,
6 but at some point, especially when I hear the
7 testimony here, isn't there gonna be a need for
8 on street parking?

9 MR. LENHART: If there's adequate off
10 street parking, then I don't think there would
11 be a need for it. That's -- that's the
12 question, and basically my testimony --

13 HEARING EXAMINER: -- but -- but I don't
14 have Grosvenor in front of me. So, you know,
15 sometimes I have done EYA -- whatchamacallit --
16 developments, and they usually -- a lot of
17 times they'll have tandem parking that nobody
18 uses the second spot and -- anyway. If you're
19 not prepared to address whether the community
20 will have enough parking, and this is one
21 segment of the community that's requesting it
22 to be blocked. I mean, my concern is that you

1 have a somewhat parochial interest defining the
2 use of this right of way that might not be for
3 the benefit of the broader community. So their
4 concern is about screening. But I guess what
5 I'll do -- you're saying either way it can
6 operate safely.

7 MR. LENHART: Yeah. I'm not advocating --

8 HEARING EXAMINER: -- as long as you have
9 22 feet of right of way.

10 MR. LENHART: 20 to 22 feet of paving.

11 HEARING EXAMINER: Of paving, I mean.

12 MR. LENHART: Un -- unobstructed, no -- no
13 parking in that area.

14 HEARING EXAMINER: Well, okay. So I will
15 await DOT and see, you know, what they say
16 about it.

17 FEMALE VOICE: Can I ask a question? Just
18 trying to understand.

19 HEARING EXAMINER: Yes.

20 FEMALE VOICE: When you're saying no
21 parking on the street, you're talking no
22 parking in front of the houses that are already

1 (inaudible) there?

2 MR. LENHART: Yes.

3 FEMALE VOICE: So where are the visitors
4 gonna go (inaudible)? Yeah. But then --

5 HEARING EXAMINER: -- no, no, I --
6 that's -- that's kind of where I am. But --

7 FEMALE VOICE: -- they (inaudible).

8 HEARING EXAMINER: Let me just -- but you
9 need to understand. This is a proposal from
10 the Fleming Avenue Citizens Association.

11 FEMALE VOICE: Yes.

12 HEARING EXAMINER: So it's their proposal
13 because they would prefer to have additional
14 screening instead of the on street parking.

15 FEMALE VOICE: Okay. That's --

16 HEARING EXAMINER: -- so.

17 FEMALE VOICE: Thank you.

18 HEARING EXAMINER: Just so you know.

19 FEMALE VOICE: Uh-huh.

20 HEARING EXAMINER: So for my purposes at
21 this point, I guess my major concern is whether
22 it can operate safely. And you say as long as

1 you have 20 to 22 feet of paving, it can
2 operate safely.

3 MR. LENHART: 20 foot street, absolutely.
4 (Inaudible) minimum is 10 foot lanes.
5 (Inaudible.)

6 HEARING EXAMINER: What about fire -- fire
7 apparatus?

8 MR. LENHART: Fire I believe is 20 foot
9 minimum for a clear, fair access.

10 HEARING EXAMINER: Now, what if parking is
11 permitted on Fleming Lane? 'Cuz there's no
12 restriction now, correct?

13 MR. LENHART: To -- to -- there's not.

14 HEARING EXAMINER: And I can't require
15 parking to be restricted. I could require
16 employees not to park there, but I can't -- so
17 your testimony is based on the assumption that
18 parking at some point will be restricted on
19 Fleming Lane, correct?

20 MR. LENHART: Yes. I believe that that
21 would be beneficial to be able to have a clear
22 20 -- 20 feet there.

1 HEARING EXAMINER: Okay.

2 MR. LENHART: But that's -- that's a DOT.

3 HEARING EXAMINER: Issue.

4 MR. LENHART: Issue. Yeah.

5 HEARING EXAMINER: Okay. Well, wait, let
6 me see if Ms. Harris -- do you have any other
7 questions of Mr. --

8 BY MS. HARRIS:

9 Q I just wanted to circle back to the final
10 question, which is in your professional opinion, do
11 you have any -- do you believe that this project can
12 be approved without any undue harm to the community
13 in terms of safety and traffic issues?

14 A Yes, it can.

15 Q Thank you.

16 HEARING EXAMINER: Okay. Now, this is
17 your time for question -- it's not your time to
18 testify, just to question him, Mr. Lenhart, on
19 his testimony, okay?

20 MS. CACHO: Yes.

21 MS. FARACLAS: One question I had. The
22 study that you did on the traffic patterns.

1 MR. LENHART: Uh-huh.

2 MS. FARACLAS: It doesn't include the
3 Heights, meaning -- meaning cars in and out,
4 because nobody lives there yet. And based on
5 the total number -- so we don't really know --
6 there are two car garages and that kind of
7 thing, so I just wanna make sure I understand
8 the study that you guys have done doesn't
9 include -- they did their own study, correct?
10 With the -- with the 30 plus.

11 MR. LENHART: Yes. So we did -- we did
12 not do a study because we're less than 30 peak
13 hour trips.

14 MS. FARACLAS: Right.

15 MR. LENHART: The Grosvenor Heights
16 Development, when they got their approval, they
17 did do the study, and the way the studies are
18 done, you -- you go out, you do existing
19 traffic counts of all the intersections that
20 were mentioned.

21 MS. FARACLAS: Uh-huh.

22 MR. LENHART: You identify all of the

1 nearby approved by unbuilt developments, and
2 then you add the traffic in so that you can
3 project the traffic, add that into the
4 intersections. And then you project the
5 traffic that would be generated by the subject
6 developments, or Grosvenor Heights, and then
7 add that in as well. So it did include a
8 future projected build out of that development.

9 BY MS. FARACLAS:

10 Q Okay. Based on the study you did that got
11 the peak hour, what was the peak hour in the
12 morning? You said it was 7 a.m. to 8 and then what
13 was the p.m. peak hour?

14 HEARING EXAMINER: Wait, I'm -- I'm
15 confused. Are you asking about the Grosvenor
16 Heights study?

17 MS. FARACLAS: I'm asking --

18 HEARING EXAMINER: -- or -- or this study?

19 MS. FARACLAS: Your study.

20 MR. LENHART: Are you referring to the --
21 like, at the intersection of Old Georgetown and
22 Cheshire? Are you asking what that peak hour

1 was there or the peak hour of our building?

2 BY MS. FARACLAS:

3 Q Your building where the staff was coming
4 in and out of.

5 A Okay.

6 Q I believe you had -- you -- you looked at
7 three hours and one was the peak. What was the peak
8 hour for the a.m. and the p.m.?

9 A The a.m. I would estimate it's gonna be
10 6:30 to 7:30 a.m., with the majority of it being
11 between 6:45 and 7:15. The evening peak hour is --
12 staff afternoon shift is 3 o'clock, so that's gonna
13 occur before 4 o'clock, which is when we typically
14 start looking. But the administrative folks get out
15 at five, and you've got five of those people plus
16 your visitors, so I would -- I would estimate that
17 the p.m. peak hour will probably be 5 to 6.

18 Q Okay. Sorry, I'm just trying to -- I had
19 a bunch of questions.

20 A Sure.

21 Q And that was -- when we're talking about
22 the study that you did for your facility, the peak

1 included the staff in and out but it also included
2 the visitors and many trucks and all of that jazz
3 that gets associated with it?

4 A Uh-huh.

5 Q Okay.

6 A It did, yes.

7 Q Great. So just one comment based on that
8 peak hour, and you didn't address it before, because
9 I (inaudible) children that age, but the Walter
10 Johnson School is required -- they have walkers
11 within --

12 MS. HARRIS: -- objection.

13 HEARING EXAMINER: Yeah.

14 MS. FARACLAS: Sorry.

15 HEARING EXAMINER: You -- you can't
16 introduce new stuff.

17 MS. FARACLAS: Okay.

18 HEARING EXAMINER: Just 'cuz we need to
19 finish the hearing at some point, so.

20 BY MS. FARACLAS:

21 Q Okay. That's fine. My other question was
22 based on the study that you did from the buses, I

1 believe it was a ride on bus.

2 A Uh-huh.

3 Q You don't anticipate having to increase
4 the volume of the schedule?

5 A No.

6 Q Okay. And then the one thing I did wanna
7 clarify with your -- I don't believe it was your
8 study, it was the one that looked at the
9 intersection of 495 and Old Georgetown Road?

10 A Yes.

11 Q You said it was signalized? It was
12 signalized to turn south, but it is just a yield
13 ramp to go in.

14 A Okay.

15 Q So that's just (inaudible) how they would
16 get to the metro.

17 HEARING EXAMINER: Okay. Again, we can't
18 be giving him new information 'cuz he doesn't
19 have a chance at this point to really.

20 MS. FARACLAS: That's okay.

21 HEARING EXAMINER: So.

22

1 BY MS. FARACLAS:

2 Q And then to your point, my question was
3 for the parking on Fleming, which my association's
4 the one who doesn't -- I believe you said is fine
5 with no parking or that's what they're proposing.
6 There is a park on Fleming and I just wanted to --
7 that is not part of -- the parking exit for the park
8 is not gonna be impacted? I'm asking no street
9 parking, but that small little park that is there,
10 the Fleming Park, the -- the baseball fields?

11 HEARING EXAMINER: Do you know where the
12 Fleming Park is?

13 MR. LENHART: That's further south of the
14 Grosvenor Heights property.

15 HEARING EXAMINER: Okay.

16 MR. LENHART: I believe that's out of the
17 scope of what we're talking about.

18 MS. FARACLAS: Great. That's what I was
19 asking.

20 HEARING EXAMINER: All right.

21 MS. FARACLAS: Just was checking to see if
22 it fell within --

1 HEARING EXAMINER: -- all right.

2 MS. FARACLAS: -- your scope of no parking
3 on Fleming, because the field that's used for
4 baseball practice and things like that --

5 HEARING EXAMINER: -- okay. Now --

6 MS. FARACLAS: -- I'm asking, I'm not
7 testifying. I'm asking. I was just making
8 sure it was in the scope.

9 HEARING EXAMINER: Okay.

10 MS. FARACLAS: Perfect. Those were my
11 questions.

12 HEARING EXAMINER: Okay. Any others?

13 BY MS. CACHO:

14 Q I just would like to clarify your
15 (inaudible) schedule, you write on the schedule?

16 A Uh-huh.

17 Q You say that at 6 o'clock in the morning
18 (inaudible). Because I live on that street and they
19 can't give a half an hour.

20 A Uh-huh.

21 Q Both ways. So it starts at 2:12 -- 6:12
22 and 6:42, then 7:12, 7:42. It's not like every 20

1 minutes. You say --

2 HEARING EXAMINER: -- I think he said a
3 half an hour. But the schedule's in the
4 record. And it -- anyway. It -- was your
5 testimony, Mr. Lenhart, that it came every half
6 an hour?

7 MR. LENHART: Approximately. Some comes a
8 little more than 30 minutes, some are less than
9 30 minutes, but approximately 30. And the
10 first -- the first bus according to the
11 schedule leaves park side at 6:06 a.m. And
12 then it circulates based upon that roughly 30
13 minute.

14 MS. CACHO: And you're aware that there is
15 no bus service on the weekends.

16 MR. LENHART: Yeah. That says Monday
17 through Friday, yes.

18 BY MS. CACHO:

19 Q Okay. So that would cause traffic on the
20 weekend, if you're thinking --

21 MS. HARRIS: -- objection. That's
22 testimony.

1 HEARING EXAMINER: Yes.

2 MS. CACHO: Okay. No, because they're on
3 the verge (inaudible) --

4 HEARING EXAMINER: -- no. Yes, I
5 understand, I understand. The traffic is
6 not -- on the weekends is not part of the --

7 MS. CACHO: -- peak hours?

8 MR. LENHART: (Inaudible.)

9 HEARING EXAMINER: Thank you.

10 MS. CACHO: Okay.

11 HEARING EXAMINER: You're good.

12 MS. CACHO: Trying to. Thank you.

13 Final question.

14 HEARING EXAMINER: Uh-huh.

15 BY MS. CACHO:

16 Q What if this studies are wrong and we end
17 up with 50 cars per hour in peak hour? What --
18 what -- what happened? We're stuck? Is there a
19 reverse process here? I mean, I'm asking. I don't
20 know.

21 HEARING EXAMINER: And what if the studies
22 are wrong? Go ahead.

1 MS. CACHO: Please allow.

2 MR. LENHART: So we get that type of
3 question a lot.

4 MS. CACHO: I bet.

5 MR. LENHART: I mean, these are -- these
6 are planning studies.

7 MS. CACHO: Uh-huh.

8 MR. LENHART: So, you know, when you're --
9 when you're evaluating impact of a proposed
10 project, you have to have something to base it
11 off.

12 MS. CACHO: Uh-huh.

13 MR. LENHART: These are all based on
14 empirical data. Real world assisted living
15 facilities that have been counted and then they
16 come up with projections at how much traffic's
17 gonna generate, and then they come up with
18 these -- these averages. And that's what we as
19 planners, that's what we use, and it's based on
20 real world data. So could it be wrong? Yes.
21 It could be higher, it could be lower. But
22 it's based on real world data, and I would say

1 based -- I've done follow-up studies in a
2 couple of cases.

3 MS. CACHO: Uh-huh.

4 MR. LENHART: And usually they're --
5 they're very good. They're right in the
6 ballpark of what we are dealing with.

7 BY MS. CACHO:

8 Q And my concern is because you're right on
9 the threshold (inaudible) 29, and normally I'm going
10 back to the ambulances. People will --

11 MS. HARRIS: -- objection.

12 MS. CACHO: -- in the morning is --

13 HEARING EXAMINER: -- okay.

14 MS. CACHO: -- (inaudible) and the
15 ambulance will come.

16 HEARING EXAMINER: Okay.

17 MS. CACHO: And there's more cars.

18 HEARING EXAMINER: Okay. He's not a noise
19 person, okay?

20 MS. CACHO: Traffic. You said traffic.

21 Traffic.

22 HEARING EXAMINER: Yeah.

1 MS. CACHO: More than 30 cars per peak
2 hour.

3 HEARING EXAMINER: Okay. But it's --
4 again, I -- my responsibility is at some point
5 to try and conclude this hearing, 'cuz we
6 already had a very lengthy day.

7 MS. CACHO: I know.

8 HEARING EXAMINER: On Thursday.

9 MS. CACHO: What happened on Thursday?
10 About this also?

11 HEARING EXAMINER: Yeah. Yeah.

12 MS. CACHO: Where was that posted?

13 HEARING EXAMINER: It's online, it's on
14 our web -- it's on our website. Everybody --
15 citizens associations got notice of it. We
16 have had Wild Wood, Grosvenor, and Fleming very
17 actively involved on --

18 MS. CACHO: -- on Thursday.

19 HEARING EXAMINER: Yes.

20 MS. CACHO: Okay. (Inaudible) I called
21 (inaudible) told me it was today.

22 HEARING EXAMINER: Well, I don't know when

1 you called. But it was --

2 MS. CACHO: -- when was it rescheduled?

3 'Cuz originally it was September the 30th.

4 HEARING EXAMINER: Yes. It was
5 rescheduled to October 20th. And that notice
6 was sent. And then we reserved the date today
7 because Mr. Lenhart couldn't make it on
8 Thursday.

9 MS. CACHO: So I was just misinformed, it
10 was by phone.

11 HEARING EXAMINER: Okay.

12 MS. CACHO: Yes.

13 HEARING EXAMINER: Well, I -- whatever
14 happened.

15 MS. CACHO: Whatever happened.

16 HEARING EXAMINER: Yes.

17 MS. CACHO: Okay. Okay. Thank you for
18 allowing us to be here on the day that we
19 shouldn't have been.

20 HEARING EXAMINER: Well, it was a good day
21 for you to come because it was primarily
22 traffic.

1 All right. Where are we. You're
2 finished?

3 MS. HARRIS: I have no redirect.

4 HEARING EXAMINER: And so --

5 MS. HARRIS: That concludes Mr. Lenhart's
6 testimony.

7 HEARING EXAMINER: Okay. And I just
8 wanted to discuss the views of -- from Fleming
9 Avenue.

10 MS. HARRIS: It was our intention to have
11 Mr. Teeters back up briefly for a rebuttal
12 testimony about the shuttle bus. Mr. --

13 HEARING EXAMINER: -- (inaudible).

14 MS. HARRIS: -- Iraola regarding your
15 question about the views.

16 HEARING EXAMINER: Okay.

17 MS. HARRIS: And the relationship to the
18 properties behind us, and then I wanted to make
19 a closing statement.

20 HEARING EXAMINER: Okay. Now, you can
21 stay. We're -- you're welcome to stay.

22 Okay. Which one first? Mr. Teeters or?

1 MS. HARRIS: Mr. Iraola's fine.

2 HEARING EXAMINER: Iraola.

3 (Speaking out of hearing.)

4 MS. HARRIS: Don't go away, Mr. Lenhart.

5 MALE VOICE: May I use the restroom?

6 HEARING EXAMINER: Yeah.

7 MALE VOICE: Thank you.

8 (Speaking out of hearing.)

9 HEARING EXAMINER: Okay. Mr. Iraola, you
10 are still under oath.

11 MR. IRAOLA: Okay.

12 BY MS. HARRIS:

13 Q Thank you. Can you please generally
14 describe the residential development to the south of
15 the property?

16 A Certainly. Grosvenor Heights, it's been
17 approved for 155 lots. Ten single family homes and
18 the remainder in town homes, in accordance with the
19 R 90 operational method of development. This -- the
20 operational method effectively allows for a compact
21 clustering of development.

22 Q Uh-huh.

1 A Smaller lot sizes with consolidated open
2 space. Single family home lots for Grosvenor
3 Heights are about a average of 5,000 square feet.

4 Q Uh-huh.

5 A And they have rear loaded garages and
6 access on to an outie way. The townhouse lots are
7 about 15,000 square feet. Some are rear loaded.
8 Garages on alleys, similar to the single family
9 attached homes, but some are also front loaded as
10 well on to streets. And the maximum approved
11 building height is 40 feet.

12 Q And just to clarify, what's the lot
13 covered -- I mean, the lot size for the -- the town
14 houses?

15 A The townhouses are -- they range but the
16 minimum is 1,500 square feet.

17 Q I believe you said 15,000.

18 A I'm sorry. Thank you.

19 Q Okay.

20 HEARING EXAMINER: Oh, 1,500.

21 MR. IRAOLA: 1,500, sorry.

22 HEARING EXAMINER: Okay. Is that for the

1 townhouses?

2 MR. IRAOLA: Townhouse lots.

3 HEARING EXAMINER: What about the single
4 family?

5 MR. IRAOLA: Their minimum is 5,000 square
6 feet.

7 HEARING EXAMINER: Okay.

8 BY MS. HARRIS:

9 Q And can you please explain the residential
10 product types immediately to the south of the
11 property? You can refer to what will be a new
12 exhibit and then also explain the distances and the
13 relationship of those houses to the proposed
14 property.

15 A Sure.

16 Q So this will be Exhibit Number 83.

17 A 83?

18 HEARING EXAMINER: And how would you
19 describe that exhibit? Yes, 83. Unless
20 there's an objection.

21 MR. IRAOLA: And this -- the exhibit is
22 titled Subject Property Along Grosvenor

1 Heights.

2 HEARING EXAMINER: Okay.

3 MR. IRAOLA: So this exhibit on the right
4 hand side is a partial revised landscape plan
5 enlargement, which has already been admitted
6 into the record by Ms. Russel. That does show
7 also super imposed on that some of the adjacent
8 relationships on what -- what -- land uses for
9 Grosvenor Heights. What is shown and labeled
10 SFD is a single family home, which orients the
11 front on to Fleming Avenue and the rear on to
12 an alley. It shares an alley with a group of
13 town homes which is labeled single family
14 attached.

15 HEARING EXAMINER: I see.

16 MR. IRAOLA: Here and this essentially
17 would extend further to the south. It's a
18 stick of perhaps grouping of town homes into a
19 single building. Also further to the east is
20 another grouping of town homes which is also
21 labeled single family cashed orange, but its
22 orientation is different. It has their rears,

1 essentially towards the subject property, and
2 it does front on to a street with -- with
3 garages on the front. So the middle grouping
4 is rear loaded where an alley -- shares an
5 alley with a single family.

6 HEARING EXAMINER: I see.

7 MR. IRAOLA: Detached homes. The images
8 off to the -- the left hand are the Grosvenor
9 Heights, the rear view of what the homes are
10 gonna be -- look like. And they're --

11 HEARING EXAMINER: -- and that's the
12 single families, correct?

13 MR. IRAOLA: That's correct.

14 HEARING EXAMINER: Okay.

15 MR. IRAOLA: The image source is from
16 Sandy Spring Builders website on there. So
17 what that does show is the single family
18 detached homes and what they look like along
19 the rear elevation, not on the front Fleming
20 side as well. The proposed right view, the set
21 back along this, this would be considered the
22 rear set back for -- for the property. The

1 minimum required 25 feet. The minimum that we
2 have is 37 feet to the property line, which is
3 about a 48 percent increase over that. But I
4 think what's more important to understand is
5 kind of the building separation between the --
6 the uses, the Brightview versus -- and I'll go
7 over -- there's three of them, three different
8 dimensions. And this also kind of corresponds
9 with the --

10 (Cross talk.)

11 BY MS. HARRIS:

12 Q Can you explain -- just identify the
13 distances for each?

14 A Sure. The end of the right view building
15 to the single family detached home, separation is
16 49 feet. Separation distance between the -- the
17 ends of the single family attached to the town
18 homes, the middle grouping, to the main face of the
19 Brightview is a hundred feet.

20 Q Uh-huh.

21 A And the -- the grouping of town homes for
22 this to the east is separated from the Brightview by

1 65 feet.

2 Q Okay. Now, can you explain the height
3 relationship between those three product types and
4 the proposed building?

5 A And there's a series of sections which I
6 believe are --

7 Q -- checked in the records?

8 A It's in the record. It's 34 K.

9 HEARING EXAMINER: Oh, I remembered those.
10 She -- Ms. Russell testified as to the right
11 hand.

12 MR. IRAOLA: And they roughly correspond
13 the similar -- similar distances that were
14 shown in the plan view. The first site section
15 kind of shows the relationship between single
16 family, detached homes at 49 feet, and it
17 actually is -- although it's labeled 45, it's
18 actually 49, because when we revised the -- the
19 building to push that set back here, it
20 adjusted some things here.

21 HEARING EXAMINER: Okay.

22 MR. IRAOLA: It actually was more

1 beneficial.

2 HEARING EXAMINER: This is pre-revision.

3 MR. IRAOLA: That's correct.

4 HEARING EXAMINER: I recall.

5 MR. IRAOLA: That's correct.

6 HEARING EXAMINER: Okay.

7 MR. IRAOLA: The rest of the sections
8 remain essentially the same. The building
9 heights you can see are very similar. They're
10 both -- this one's approved at 40, this is
11 proposed at 40 for the height. And also in
12 between is landscaping, as Ms. Russell had --
13 had indicated also.

14 The second section where we have that
15 hundred foot separation is this section labeled
16 under two on -- on this exhibit, which is 34 K.
17 Again, between the two buildings and again we
18 have a 40 foot height here where the town homes
19 would be, the end -- the -- the end grouping,
20 to the main face a hundred feet. Also in
21 between is considerable landscaping, not only
22 on the subject property site, but also as was

1 required for landscaping for site plan approval
2 for Grosvenor Heights as well. And what also
3 happens in between is that that lower terrace,
4 which is where we have a private space for the
5 residence of the Brightview.

6 The third and final site section, which
7 identified as number three on the exhibit shows
8 that 65 foot separation to the rears of -- of
9 the town homes. And that's illustrated here
10 again with considerable amount of landscape in
11 between those.

12 HEARING EXAMINER: I guess my question was
13 there was some type -- can you (inaudible)
14 shows that -- my question was Mr. Cline
15 testified that they needed the additional
16 screening because they would see that -- what
17 he called it -- a gutter in the -- in the rear
18 of -- of the facility.

19 MR. IRAOLA: Okay.

20 HEARING EXAMINER: Okay. Yes. That --
21 so -- so my question is -- my question is what
22 I heard in the testimony was the facility is

1 lower than the Fleming Avenue houses. It's --
2 the screening has been added and my -- so
3 what -- given, you know, the -- what's being
4 proposed on the site and the location of the
5 Grosvenor houses, how much is Fleming Avenue
6 really going to see of that rear yard I guess
7 is my question. 'Cuz I don't see -- he
8 mentioned that he -- the public utility
9 easement going down the side, but I see, you
10 know, the houses will be obstructing some of
11 the view. Can you address that? That's what I
12 was --

13 BY MS. HARRIS:

14 Q And if I could, it may be helpful to talk
15 about various vantage points. If you're standing
16 here looking there, if you're standing here versus
17 if you're standing further to the south.

18 A I was just gonna mention about vantage
19 points. Yes, there is a -- a gap, and I believe
20 it's 20 feet for the -- for the easement, and again,
21 if someone is walking here, there is some evergreen,
22 so that would kind of capture that -- kind of your

1 cone of vision. It might expose this corner of the
2 house of the proposed Brightview. Let's say you're
3 walking north northbound on the Bethesda Trolley
4 Trail, for example. Conversely, if you're coming
5 southbound on the -- on the -- on the Bethesda
6 Trolley Trail, you have another grouping of hollies,
7 which kind of obscures kind of this edge. It's
8 really (inaudible) really wouldn't be able to see
9 back in here unless you're immediately down here.
10 And perhaps even then you might be able to see
11 what -- what's going on in the rear -- in the rear
12 yard here.

13 HEARING EXAMINER: Now, further down from
14 Fleming, forget -- not the trolley trail, but I
15 mean across the street.

16 MR. IRAOLA: Right.

17 HEARING EXAMINER: From Fleming, how much
18 of an unfiltered view are they going to have?

19 MR. IRAOLA: It would probably be probably
20 less, I would say. 'Cuz you're further away.
21 And remember, on Fleming -- on Fleming Avenue,
22 you can have street trees that are being

1 proposed, too, that help. There's a lot going
2 on between that separation between this
3 building and the Fleming Avenue homes, which
4 would include the street trees, the trees that
5 are on site on the Fleming side -- on the
6 Fleming homesites, in addition to the street
7 trees that would occur on -- on -- on Fleming
8 Brightview side, and on the additional buffer
9 landscape. Plus the (inaudible).

10 HEARING EXAMINER: Are those -- I'm sorry
11 to interrupt.

12 MR. IRAOLA: Sure.

13 HEARING EXAMINER: Plus what?

14 MR. IRAOLA: Plus the fact that the
15 building is actually depressed slightly, and
16 there's a fair amount of articulation that's
17 going on.

18 HEARING EXAMINER: Okay.

19 MR. IRAOLA: Along -- along that facade.

20 HEARING EXAMINER: And were you saying
21 that those street trees on the east side of
22 Fleming, they're -- are they going to be, to

1 your knowledge, continued down along the
2 Grosvenor side? Oh, no. Will they be
3 continued south?

4 MR. IRAOLA: Yes. They have been proposed
5 and it's -- there are -- there are street trees
6 along the front of the Grosvenor Heights
7 frontage.

8 HEARING EXAMINER: Okay.

9 BY MS. HARRIS:

10 Q Can you identify them on that Exhibit 83?

11 A You can actually see one -- one that's
12 indicated right here, but there is a continuous row
13 of street trees.

14 Q But then also along the front edge of our
15 of the (inaudible)?

16 A Correct, and those are these larger kind
17 of circles on the right hand side of the planning
18 enlargement.

19 HEARING EXAMINER: Okay. That -- that
20 answered my question.

21 MS. HARRIS: If I could, are you also
22 concerned about the relationship of those -- of

1 those houses to the -- immediately to the south
2 of the property? And if so, I had several
3 other questions, or one other question.

4 HEARING EXAMINER: No.

5 MS. HARRIS: Okay. Okay. So that
6 concludes --

7 HEARING EXAMINER: -- because I see you've
8 got a pretty good screening with evergreens and
9 it's depressed and the -- and they're not here.
10 So.

11 MS. HARRIS: Exactly. Which is why in the
12 interest of time on Thursday we didn't get into
13 that.

14 HEARING EXAMINER: No, and I don't want --

15 MS. HARRIS: -- okay.

16 HEARING EXAMINER: I was more concerned
17 about the impact when I realized that single
18 family homes -- it just seemed to me that I
19 wanted to know the impact on the Fleming Ave --
20 views from across the street on Fleming Avenue
21 to the facility. That's what I was concerned
22 about.

1 MS. HARRIS: Thank you. Okay. Then that
2 concludes the rebuttal testimony of Mr. Iraola.

3 HEARING EXAMINER: Okay. Any questions?
4 Okay. You're excused again.

5 MR. IRAOLA: Thank you.

6 HEARING EXAMINER: Until further notice.

7 MR. IRAOLA: Yes.

8 MS. HARRIS: So then I wanted final
9 witness is Mr. Teeters.

10 HEARING EXAMINER: Okay.

11 MS. HARRIS: Just to answer a couple
12 questions.

13 HEARING EXAMINER: Mr. Teeters, you're
14 still under oath.

15 MR. TEETERS: Still under oath.

16 BY MS. HARRIS:

17 Q So following up on a question that the
18 hearing examiner had was can you explain how the --
19 where you know of the proposed conditions is that
20 the shuttle bus will not idle, and there was a
21 question by the hearing examiner as to how that
22 would be enforced. Can you explain that?

1 A So we -- we have drivers (inaudible) a few
2 that are part of our staff, and so we can make it a
3 policy and procedure to turn the van off. We -- as
4 I mentioned in my previous testimony, we will go out
5 one to two times a day with the shuttle van.
6 They'll pull up to the front. We already instruct
7 them to turn it off. We can make that a formal
8 policy.

9 Q Like in your employee -- or however you --

10 A -- yeah, and I've been to many (inaudible)
11 and the reason is it takes time, several minutes,
12 maybe 15 to 20 minutes to get everybody in the van.
13 Because as people come into the lobby area, but also
14 some residents may move more slowly than others to
15 get into the van. So we do not have it just sitting
16 there idling for 15 minutes, but we can ensure that
17 our drivers are aware of that, that it is formal in
18 the policy at Brightview. So.

19 HEARING EXAMINER: Okay. Any questions?

20 FEMALE VOICE: Yes. (Inaudible) today
21 (inaudible).

22 MR. TEETERS: That's correct.

1 FEMALE VOICE: Okay. Thank you. No other
2 questions.

3 HEARING EXAMINER: No other questions?
4 Okay. Well, it is now time for anything else
5 you'd like to say?

6 FEMALE VOICE: No. I have (inaudible),
7 that's the only thing I can tell you. Those
8 (inaudible).

9 HEARING EXAMINER: Okay.

10 FEMALE VOICE: The other new development
11 is really getting out of proportion to get out
12 of their driveway.

13 HEARING EXAMINER: Okay.

14 FEMALE VOICE: There's that. (Inaudible.)

15 HEARING EXAMINER: Ms. Harris, do you have
16 a closing statement?

17 MS. HARRIS: I do.

18 HEARING EXAMINER: Now, what I'd like you
19 to do in your closing statement, I didn't hear
20 Mr. Lenhart say that parking -- it would be --
21 the additional right of way would be safe if
22 parking were restricted on Fleming, which it

1 isn't now. So please address -- I -- I don't
2 know if you have that.

3 MS. HARRIS: I was planning to touch on
4 that.

5 HEARING EXAMINER: Okay.

6 MS. HARRIS: Thank you. So I -- I think
7 it's been very evident throughout this entire
8 process -- I mean, from the hearing examiner's
9 perspective, the entire process was two hearing
10 days, but in reality this has been a very long
11 process.

12 HEARING EXAMINER: Right.

13 MS. HARRIS: For the applicant. And he's
14 worked very closely with the neighbors, that
15 the use is compatible with the surrounding
16 neighborhood. We didn't -- did not testify in
17 detail to all the exhibits that are submitted
18 into the record that make that point.

19 HEARING EXAMINER: I am going to admit
20 them into the -- all the exhibits except I
21 think 67 was excluded, and that was the
22 association's rebuttal submitted the date

1 before the hearing to Mr. Bouscher's.

2 MS. HARRIS: Correct, yes. Okay. Thank
3 you. But the -- the exhibits do in fact make
4 the point and emphasize the compatibility, and
5 I especially note Exhibits 34 K and L, which
6 are the sections I have just referred to in the
7 Fleming Avenue rendering, which shows the
8 landscaping, and then also the perspectives
9 that were submitted. And those were submitted
10 behind Mr. Bouscher's report.

11 HEARING EXAMINER: Right.

12 MS. HARRIS: Emphasizing that as
13 submitted, they do not reflect the further
14 changes that were made in response to the
15 neighbors. You heard from Mr. Johnson and our
16 other expert said the project was well within
17 the zoning requirement. We're almost a third
18 less than what the next (inaudible) permit.
19 The lot coverage is approximately a third less
20 than what the zoning normally permit, and as
21 you heard numerous times, the setbacks on all
22 four sides are significantly greater than

1 what's been the minimum required.

2 You heard from (inaudible) Russel that
3 this was probably the most landscaped project
4 that she had ever worked on, and that Exhibit
5 79 that she showed that was an example of the
6 landscaping buffer, I believe she testified
7 that it was only approximately 20 feet wide.
8 The landscaping buffering here is -- is
9 significantly greater. It's 28 to 38 feet, you
10 know, so that's almost 200 percent along the
11 portion of that facade, which is -- and that
12 doesn't even include the street trees along the
13 bike path. So not only is the entire site well
14 landscaped, but there's been extra attention
15 given to that western facade. And while we
16 have no objection to the Fleming Avenue
17 neighbor's request for more landscaping by
18 eliminating the parking, and there's never a
19 downside to more landscaping, we don't think
20 that's necessary in order to make a finding
21 that -- that the property and the project is
22 compatible with the neighborhood. And -- and I

1 don't know if I've specifically addressed the
2 question that you wanted me to address --

3 HEARING EXAMINER: -- my question is what
4 is -- say DOT -- I don't know what they're
5 gonna say.

6 MS. HARRIS: Uh-huh.

7 HEARING EXAMINER: But say DOT says yes,
8 subject to the requirement that parking is
9 restricted on Fleming. Well, parking's not
10 restricted and I can't require the applicant to
11 request that parking be restricted on Fleming.
12 So what do I do about that? I mean.

13 MS. HARRIS: I think in terms -- from --
14 from -- in terms of the applicant, as
15 Mr. Teeters testified, what -- the applicant's
16 proposing ten more parking spaces than what the
17 ordinance requires. And is --

18 HEARING EXAMINER: -- yes, but it wasn't
19 a -- whether there's sufficient parking. It
20 was the term radius for the -- the apparatus.
21 So I guess my question is, I mean, you can
22 always come back at -- when parking is

1 restricting. When it's actually restricting
2 and get a minor amendment if you wish to, to
3 put in the landscaping. But it's difficult for
4 me to say okay, you know, my concern is safety.
5 And so if the Fleming Avenue turn from
6 Grosvenor or vice versa is -- cannot
7 accommodate on street parking -- cannot
8 accommodate fire emergency apparatus if
9 parking -- on street parking is not restricted.
10 Are you follow -- there's a lot of --

11 (Cross talk.)

12 HEARING EXAMINER: -- negatives in there.

13 MS. HARRIS: I'm a little confused, but I
14 think we can all -- everyone in the room would
15 likely agree that the only way that DOT may
16 probably agree to eliminating the parking,
17 the -- the southern half for parking area and
18 replace that with landscaping is if they
19 adamantly also impose a strict no parking
20 anywhere in that --

21 (Cross talk.)

22 HEARING EXAMINER: -- yeah, but that's

1 not -- I have to approve the special exception
2 now without the parking restriction. So, you
3 know, if you have to go through preliminary
4 plan. You could file a minor amendment when
5 you do get the -- I'm just trying to sort this
6 through in the mass of approvals.

7 MS. HARRIS: I mean, we had -- I had
8 thought actually that this wasn't a
9 conditional -- the neighbor's request really
10 wasn't an issue that would have been dealt with
11 at the conditional use stage, but rather at
12 preliminary plan.

13 HEARING EXAMINER: Yeah, but it does, 'cuz
14 I have to find -- I have this plan in front of
15 me (inaudible).

16 MS. HARRIS: True.

17 HEARING EXAMINER: So this is what I have
18 to find is safe.

19 MS. HARRIS: If D --

20 HEARING EXAMINER: -- and the need -- the
21 widening -- we have broad authority to
22 condition a proposed use for the safety and

1 welfare of the neighborhood. And the
2 additional landscaping is -- is part -- driven
3 by this use. So that's -- that's my conundrum.

4 MS. HARRIS: Uh-huh.

5 HEARING EXAMINER: If DOT today says we're
6 all for it, go wild without any caveats, I will
7 certainly consider it. But --

8 MS. HARRIS: -- so if DOT were to say we
9 are fine with it, go forward, to me, and if the
10 hearing examiner's comfortable with that, it
11 would seem to me the hearing examiner's
12 condition -- and -- and keep in mind that the
13 condition that Mr. Cline proposed was only that
14 we move more collaboratively toward -- toward
15 that end. But the condition would be subject
16 to preliminary plan approval, which includes
17 the -- if you need to make this finding, a no
18 parking restriction along the front edge of the
19 property along Fleming Avenue, along the front
20 edge of the subject property. That's -- that's
21 one scenario.

22 The other scenario is if DOT says no, we

1 don't agree with this. We think it's unsafe
2 and we want -- we want the on street parking in
3 that 29 and a half front paving section. Then
4 I think the discussion ends and the hearing
5 examiner needs to --

6 HEARING EXAMINER: -- well, let's --

7 MS. HARRIS: -- expect that (inaudible) --

8 HEARING EXAMINER: -- see what happens.

9 DOT's gonna submit their comments. So we can
10 play it one step at a time.

11 MS. HARRIS: Okay. I would note, sort of
12 closing that loop, and I mentioned this a
13 moment ago, is that it's -- that the additional
14 landscaping, we do not believe it -- the
15 additional landscaping is not needed to make
16 the case that the -- that the --

17 HEARING EXAMINER: -- yeah.

18 MS. HARRIS: -- project is --

19 HEARING EXAMINER: -- and --

20 MS. HARRIS: -- has no adverse (inaudible)

21 --

22 HEARING EXAMINER: -- and -- well, I can't

1 say at this point my conclusion, but I will say
2 it's a lot of landscaping.

3 MS. HARRIS: We agree -- thank. You we
4 agree with (inaudible).

5 HEARING EXAMINER: And the step backs and
6 the depression.

7 MS. HARRIS: Yes.

8 HEARING EXAMINER: But it is a lot of
9 landscaping for this type of use.

10 MS. HARRIS: Uh-huh. And in fact, in
11 thinking about that landscaping, I mean, the --
12 the setback requirement in the zone is 20 feet
13 and the distance between the building and the
14 neighbor -- the houses to the west is 120 feet.

15 HEARING EXAMINER: Right.

16 MS. HARRIS: Mr. Bouscher, who was the
17 only expert who testified in regard to real --
18 real estate value stated that it was his expert
19 opinion that the project would have no adverse
20 impact on the adjacent properties, and I think
21 the greatest testament to this, and we -- we
22 noted this a moment ago, is that the neighbors

1 that are in fact the closest and who have the
2 most to lose, which is the property owners
3 immediately to the south, have no opposition to
4 this project, as evidenced by the fact that
5 they haven't participated in any of these
6 hearings, and we've worked very closely with
7 them. There's no requirement that the building
8 needs to be hidden. And we did hear a lot of
9 discussion about whether the building was
10 hidden or not. And in fact, the applicant
11 doesn't want the building to be hidden. I
12 mean, that sends a message both to the users
13 which is very contrary to what they're trying
14 to achieve. They wanna be part of the fabric
15 of a community, you know, this isn't -- we're
16 not trying to tuck older people hidden away
17 where they're not seen. And so the
18 perspectives made I think did a good job by
19 saying you will see glimpses of the building,
20 but -- but that it is well landscaped.

21 In terms of the master plan, we went
22 through that exhaustively, how we made all the

1 requirements of the master plan, and I just
2 note that the master plan specifically talks
3 about diversity and housing and the housing for
4 the elderly, and we satisfy that requirement.

5 And then finally, I just wanna again note
6 about the collaborative nature of this. The
7 application was filed in May of 2016, but in
8 late 2015, eight months prior, the applicant
9 started reaching out to the neighborhood. And
10 I think that the -- the most significant or
11 the -- what was most obvious was that the --
12 one of the requests that came on early on in
13 one of those first meetings was a very costly
14 request, which was undergrounding the parking,
15 and the applicant was willing to do that. And
16 then since that time, we've worked very hard to
17 make additional changes, some which occurred
18 during the last three weeks during the
19 postponement. And I think, you know, we're --
20 it was a little bit surprising to see these two
21 individuals come this morning because of all
22 the work that we have done with the outreach to

1 the neighbors. And I think Mr. Cline actually
2 reflected that in his testimony.

3 We -- so with that, I just note that we
4 accept the conditions of the planning staff and
5 the planning board. We also accept the
6 conditions of the Wild Wood Manor, who
7 submitted the -- yeah, the Wild Wood Manor,
8 that was the October 19th letter.

9 HEARING EXAMINER: Uh-huh.

10 MS. HARRIS: And then there were several
11 additional conditions from the Fleming Avenue
12 neighbors. And I can't -- I can't recall, I
13 think Mr. Cline identified them generally.

14 HEARING EXAMINER: He did.

15 MS. HARRIS: And so what we are doing,
16 we're gonna work collaboratively, and then it's
17 our intention to submit those written proposed
18 conditions sometime this week to the hearing
19 examiner.

20 HEARING EXAMINER: Okay.

21 MS. HARRIS: So with that, we -- that
22 concludes our testimony.

1 HEARING EXAMINER: Okay. Anything in
2 closing? You don't get to testify. You just
3 get to --

4 FEMALE VOICE: Say something. Yeah. Just
5 one question.

6 HEARING EXAMINER: Uh --

7 FEMALE VOICE: -- no questions, no. Okay.
8 I'm fine.

9 HEARING EXAMINER: I really, you know, I
10 hate to technically (inaudible).

11 FEMALE VOICE: (Inaudible.)

12 HEARING EXAMINER: I -- you may wish to
13 continue your discussion offline.

14 FEMALE VOICE: Uh-huh.

15 HEARING EXAMINER: But with that, I'm
16 going to adjourn this hearing. At the last
17 hearing we went over some dates for parties to
18 submit, make certain submittals, including the
19 proposed joint commissions that you and
20 Mr. Cline agree with, agreed to. So with that,
21 it's -- it's only open for the items that I
22 listed in -- in my medical -- in my e-mail to

1 Ms. Harris, which is any revised plans of the
2 proposed condition, comments from planning
3 staff and DOT, and then any responses that the
4 parties wish to make to those agency comments.

5 MS. HARRIS: And then also we need to get
6 to you the planning board approval on the
7 preliminary forest conservation.

8 HEARING EXAMINER: Yes. And Exhibit 76.

9 MS. HARRIS: Right.

10 HEARING EXAMINER: Wherever that may be.
11 Okay.

12 MS. HARRIS: Thank you.

13 HEARING EXAMINER: Thank you so much.

14 FEMALE VOICE: Thank you.

15 HEARING EXAMINER: I -- I love it when --
16 I'm glad you came and -- all right.

17 (Speaking out of hearing and cross talk.)

18 (The hearing was concluded at 12:30 p.m.)
19
20
21
22

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I, Jackie A. Scheer, do hereby certify
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JACKIE A. SCHEER

Transcript of Hearing
Conducted on October 24, 2016

133

A			
<p>ability 58:1, 132:6</p> <p>able 20:17, 33:8, 34:8, 75:14, 85:21, 111:8, 111:10</p> <p>about 8:1, 8:19, 16:14, 18:19, 25:13, 25:19, 28:15, 37:6, 38:13, 40:13, 54:21, 55:1, 58:9, 58:21, 59:11, 59:19, 61:22, 63:10, 66:13, 69:4, 72:16, 75:22, 76:1, 77:7, 80:20, 80:22, 82:5, 83:4, 83:16, 85:6, 88:15, 89:21, 92:17, 98:10, 100:12, 100:15, 102:3, 102:7, 103:3, 106:3, 110:15, 110:18, 113:22, 114:17, 114:22, 121:12, 126:11, 127:9, 128:3, 128:6</p> <p>above 60:11</p> <p>absolutely 85:3</p> <p>accept 129:4, 129:5</p> <p>accepted 9:21</p> <p>access 24:16, 33:16, 33:21, 60:20, 78:21, 81:9, 85:9, 102:6</p>	<p>accidents 21:15</p> <p>accommodate 42:11, 66:21, 122:7, 122:8</p> <p>accordance 101:18</p> <p>according 47:13, 51:19, 94:10</p> <p>account 49:2, 52:13, 53:10</p> <p>accounts 53:12, 53:13, 53:22</p> <p>achieve 127:14</p> <p>acres 3:11, 9:4</p> <p>across 111:15, 114:20</p> <p>actively 98:17</p> <p>actual 50:6</p> <p>actually 10:9, 39:11, 50:22, 53:14, 107:17, 107:18, 107:22, 112:15, 113:11, 122:1, 123:8, 129:1</p> <p>adamantly 122:19</p> <p>add 18:7, 18:21, 24:15, 34:5, 88:2, 88:3, 88:7</p> <p>added 110:2</p> <p>addition 112:6</p> <p>additional 7:7, 7:11, 27:2, 43:21, 45:6, 58:22, 76:16, 76:21,</p>	<p>77:18, 84:13, 109:15, 112:8, 117:21, 124:2, 125:13, 125:15, 128:17, 129:11</p> <p>address 6:19, 7:6, 8:6, 18:2, 19:9, 37:16, 82:19, 90:8, 110:11, 118:1, 121:2</p> <p>addressed 22:6, 121:1</p> <p>adds 53:22</p> <p>adequate 42:10, 45:3, 82:9</p> <p>adjacent 43:18, 104:7, 126:20</p> <p>adjourn 130:16</p> <p>adjusted 107:20</p> <p>adjusting 35:6</p> <p>administrative 1:1, 48:15, 64:16, 89:14</p> <p>admit 118:19</p> <p>admitted 104:5</p> <p>adverse 77:19, 125:20, 126:19</p> <p>advocating 79:15, 79:18, 80:9, 83:7</p> <p>affect 62:17</p> <p>affirm 7:22, 40:11</p> <p>after 14:10, 48:22, 57:7, 61:3, 62:13, 62:15,</p>	<p>66:8</p> <p>afternoon 38:14, 89:12</p> <p>again 3:20, 8:6, 37:1, 57:20, 59:19, 76:9, 91:17, 98:4, 108:17, 109:10, 110:20, 115:4, 128:5</p> <p>age 9:8, 90:9</p> <p>agency 131:4</p> <p>ago 125:13, 126:22</p> <p>agree 27:13, 64:1, 122:15, 122:16, 125:1, 126:3, 126:4, 130:20</p> <p>agreed 130:20</p> <p>agreement 7:4</p> <p>ahead 4:2, 10:1, 10:15, 47:5, 67:19, 72:16, 73:11, 95:22</p> <p>albeit 25:7</p> <p>all 3:4, 6:2, 7:14, 7:19, 8:16, 9:7, 10:8, 17:16, 23:3, 24:1, 24:5, 24:14, 36:18, 37:15, 37:21, 39:21, 46:22, 47:13, 49:13, 50:17, 55:12, 58:14, 62:6, 64:7, 64:10, 67:13, 69:3, 71:1, 71:2, 71:7,</p>

Transcript of Hearing
Conducted on October 24, 2016

134

<p>73:18, 77:8, 87:19, 87:22, 90:2, 92:20, 93:1, 96:13, 100:1, 118:17, 118:20, 119:21, 122:14, 124:6, 127:22, 128:21, 131:16 alley 104:12, 105:4, 105:5 alleys 102:8 allow 96:1 allowable 74:14 allowing 76:1, 99:18 allows 101:20 almost 119:17, 120:10 along 65:19, 78:6, 103:22, 105:18, 105:21, 112:19, 113:1, 113:6, 113:14, 120:10, 120:12, 124:18, 124:19 already 6:12, 7:16, 7:19, 9:8, 55:11, 83:22, 98:6, 104:5, 116:6 also 14:8, 25:10, 28:1, 35:2, 39:8, 42:21, 43:14, 48:5, 53:22, 81:13, 90:1, 98:10, 102:9, 103:12, 104:7, 104:19, 104:20, 106:8,</p>	<p>108:11, 108:13, 108:20, 108:22, 109:2, 113:14, 113:21, 116:13, 119:8, 122:19, 129:5, 131:5 although 107:17 always 121:22 ambulance 79:4, 97:15 ambulances 97:10 amendment 122:2, 123:4 amount 22:10, 25:5, 25:7, 66:20, 109:10, 112:16 analysis 43:15, 43:21, 44:19, 44:20, 45:10, 71:8 analyzing 63:21 andrew 2:17 another 13:15, 34:5, 43:2, 57:5, 72:15, 76:18, 104:20, 111:6 answer 115:11 answered 113:20 anticipate 76:22, 91:3 anticipated 26:7, 45:15, 55:16, 57:2, 59:6 any 8:14, 11:19, 12:5, 14:4, 14:9, 16:14, 19:2, 24:8,</p>	<p>25:2, 31:20, 32:5, 34:19, 37:20, 38:1, 39:12, 41:1, 50:21, 54:14, 59:1, 66:19, 77:19, 78:15, 86:6, 86:11, 86:12, 93:12, 115:3, 116:19, 124:6, 127:5, 131:1, 131:3, 132:8 anybody 55:5, 61:5 anyone 4:7 anything 17:18, 24:6, 39:18, 53:1, 117:4, 130:1 anyway 65:10, 82:18, 94:4 anywhere 26:21, 122:20 apartment 15:12, 15:16 apologize 22:13 apology 9:21 apparatus 85:7, 121:20, 122:8 appeal 30:1 applicant 4:5, 7:15, 10:17, 24:14, 25:10, 25:18, 32:10, 37:2, 42:7, 62:12, 63:9, 63:14, 118:13, 121:10, 121:14, 127:10, 128:8, 128:15 applicant's 121:15</p>	<p>application 1:4, 3:8, 42:9, 43:5, 76:5, 128:7 appreciate 3:20, 71:1 approach 27:22, 28:1 approaches 73:18, 74:22 approval 87:16, 109:1, 124:16, 131:6 approvals 123:6 approve 123:1 approved 86:12, 88:1, 101:17, 102:10, 108:10 approximately 38:4, 38:9, 38:14, 39:1, 56:17, 57:3, 57:4, 62:1, 94:7, 94:9, 119:19, 120:7 area 10:8, 21:5, 22:22, 23:7, 26:4, 43:11, 43:13, 45:1, 45:3, 61:4, 61:6, 71:19, 71:20, 72:7, 73:1, 73:21, 76:21, 83:13, 116:13, 122:17 areas 43:13, 74:7, 74:10, 74:11, 74:13, 76:2 aren't 50:1 around 50:14 arrive 48:8</p>
--	--	---	---

Transcript of Hearing
Conducted on October 24, 2016

135

articulation 112:16	attributable 64:11	56:16, 79:6, 86:9, 97:10,	35:19, 37:19, 44:17, 54:11,
artist 42:3, 54:7	audio 132:6	100:11, 105:21, 105:22, 107:19,	54:16, 54:17, 55:5, 58:14,
ash 30:11	authority 123:21	111:9, 121:22	63:1, 63:19, 74:8, 74:12,
asking 88:15, 88:17, 88:22, 92:8, 92:19, 93:6, 93:7, 95:19	automatically 23:6	background 25:3	76:18, 81:7, 84:13, 87:4, 87:12, 90:8,
aspect 78:14	available 66:21	backs 126:5	93:3, 93:18, 95:2, 97:8, 99:7, 99:21,
aspects 45:22	ave 114:19	ballpark 97:6	107:18, 109:16, 114:7, 116:13, 128:21
assessment 44:21	avenue 24:12, 42:5, 67:8, 72:9, 78:4, 79:11, 84:10, 100:9, 104:11, 110:1, 110:5, 111:21, 112:3, 114:20, 119:7, 120:16, 122:5, 124:19, 129:11	base 96:10	become 66:7
assisted 12:21, 13:4, 13:15, 16:10, 39:13, 42:14, 46:4, 46:7, 46:9, 50:22, 96:14	average 16:16, 17:11, 75:8, 75:16, 102:3	baseball 92:10, 93:4	bed 16:21, 47:9, 47:10, 47:20
associated 42:14, 90:3	averages 96:18	based 6:18, 6:22, 17:18, 25:4, 41:5, 45:12, 45:20, 46:8, 46:11, 52:7, 55:19, 77:13, 85:17, 87:4, 88:10, 90:7, 90:22, 94:12, 96:13, 96:19, 96:22, 97:1	beds 9:5, 16:17, 46:1, 46:12, 47:7, 47:13, 47:14, 47:16, 47:18
association 84:10	avoid 25:22	basically 44:2, 45:8, 80:22, 82:12	been 7:16, 8:13, 10:3, 19:22, 21:9, 33:6, 33:10, 34:18, 47:2, 51:7, 51:8, 54:9, 60:1, 79:13, 80:10, 96:15, 99:19, 101:16, 104:5, 110:2, 113:4, 116:10, 118:7, 118:10, 120:1, 120:14, 123:10
associations 5:11, 7:2, 8:14, 98:15	await 83:15	bear 29:2, 56:14	beep 14:16
assume 11:11, 61:17, 64:10	aware 6:3, 16:9, 24:11, 24:19, 33:7, 33:9, 34:19, 42:15, 94:14, 116:17	beautiful 10:7	before 1:9, 42:5, 48:10, 48:22, 55:6, 57:7, 75:13, 89:13,
assumes 56:2	away 101:4, 111:20, 127:16	beauty 46:21, 59:1	
assuming 17:9, 25:19, 37:9, 63:6, 77:8	axler 53:3	because 6:15, 8:16, 9:10, 9:16, 13:2, 14:19, 15:7, 18:5, 20:14, 20:21, 20:22, 21:4, 24:3, 25:14, 27:1, 29:22, 32:10, 33:2,	
assumption 61:19, 85:17			
attached 102:9, 104:14, 106:17	B		
attention 8:19, 120:14	back 18:20, 26:22,		

<p>90:8, 119:1 beginning 75:15 behalf 4:4 behind 13:14, 100:18, 119:10 being 46:7, 89:10, 110:3, 111:22 belief 81:13 believe 25:12, 34:9, 35:5, 35:11, 36:9, 42:18, 55:22, 59:17, 63:13, 69:12, 78:18, 81:13, 81:18, 85:8, 85:20, 86:11, 89:6, 91:1, 91:7, 92:4, 92:16, 102:17, 107:6, 110:19, 120:6, 125:14 below 54:15, 55:15, 72:22 beltway 31:14, 31:19, 70:8, 70:9 ben 53:2 beneficial 85:21, 108:1 benefit 5:21, 83:3 best 65:17, 132:5 bet 96:4 bethesda 38:15, 45:3, 61:6, 71:20, 73:21, 111:3, 111:5</p>	<p>better 6:10, 78:9 between 20:13, 47:17, 48:16, 89:11, 106:5, 106:16, 107:3, 107:15, 108:12, 108:17, 108:21, 109:3, 109:11, 112:2, 126:13 beyond 7:9, 39:14, 75:21 big 8:19, 10:3, 16:17, 17:3, 23:20, 23:21 bigger 24:21, 32:9 biggest 19:18, 29:10 bike 120:13 bit 19:12, 21:6, 37:11, 47:15, 47:16, 128:20 block 78:21 blocked 81:11, 82:22 blocking 79:5 board 129:5, 131:6 both 7:1, 7:21, 41:10, 41:11, 58:15, 76:21, 93:21, 108:10, 127:12 bottom 20:5, 23:2, 25:12, 33:19 boundary 28:11, 28:12 bouscher 126:16</p>	<p>bouscher's 119:1, 119:10 bracketed 71:13 breaks 47:1 bridge 13:2, 13:14 bridges 13:3 brief 27:6 briefly 73:12, 100:11 brightview 106:6, 106:19, 106:22, 109:5, 111:2, 112:8, 116:18 bring 18:17, 55:20 broad 123:21 broader 83:3 brought 29:4 buffer 112:8, 120:6 buffering 120:8 build 9:5, 10:11, 88:8 builders 105:16 building 10:16, 10:17, 15:12, 15:16, 58:16, 89:1, 89:3, 102:11, 104:19, 106:5, 106:14, 107:4, 107:19, 108:8, 112:3, 112:15, 126:13, 127:7, 127:9, 127:11, 127:19</p>	<p>buildings 108:17 bumps 20:21, 22:3 bunch 89:19 bus 17:21, 18:5, 18:12, 18:19, 21:2, 35:6, 35:9, 35:10, 35:13, 36:4, 36:10, 36:13, 36:15, 37:10, 38:4, 38:5, 38:7, 38:10, 38:15, 38:16, 38:20, 39:3, 56:11, 57:1, 57:16, 58:3, 91:1, 94:10, 94:15, 100:12, 115:20 buses 19:21, 35:15, 54:22, 90:22 business 14:20, 15:10, 23:10 busy 21:15 buy 15:9 buzzing 48:19 by: 1:22</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>c-a-c-h-o 8:9 cacho 2:3, 2:5, 2:14, 4:22, 8:7 cacho: 4:22, 5:10, 5:14, 5:16, 5:19, 6:9, 8:7,</p>
--	---	--	---

Transcript of Hearing
Conducted on October 24, 2016

137

<p>8:13, 8:16, 8:18, 8:22, 9:14, 9:17, 9:21, 10:2, 10:7, 10:15, 10:18, 10:21, 11:2, 11:5, 11:9, 11:15, 11:18, 12:10, 12:16, 12:18, 13:8, 13:10, 13:12, 13:18, 13:20, 14:2, 14:11, 14:15, 14:22, 15:7, 15:14, 15:21, 16:3, 17:6, 17:9, 17:19, 18:4, 18:10, 18:15, 19:3, 19:7, 34:2, 34:4, 34:12, 34:18, 65:12, 66:2, 66:6, 66:9, 86:20, 93:13, 94:14, 94:18, 95:2, 95:7, 95:10, 95:12, 95:15, 96:1, 96:4, 96:7, 96:12, 97:3, 97:7, 97:12, 97:14, 97:17, 97:20, 98:1, 98:7, 98:9, 98:12, 98:18, 98:20, 99:2, 99:9, 99:12, 99:15, 99:17 calculation 56:4 call 7:11, 53:1 called 32:15, 98:20, 99:1, 109:17 came 7:5, 78:2,</p>	<p>94:5, 128:12, 131:16 can't 12:11, 85:14, 85:16, 90:15, 91:17, 93:19, 121:10, 125:22, 129:12 cannot 13:10, 122:6, 122:7 capacity 42:10, 66:21, 71:9, 73:3, 73:6 capture 58:1, 110:22 captures 66:4 car 49:2, 49:4, 52:13, 54:1, 54:17, 58:9, 65:18, 77:18, 79:2, 87:6 care 3:10, 41:20, 50:22 cars 24:22, 76:12, 76:16, 76:21, 79:12, 80:6, 87:3, 95:17, 97:17, 98:1 case 1:5, 7:19, 44:17, 125:16, 132:8 cases 51:13, 54:9, 54:10, 54:12, 65:17, 97:2 cached 104:21 catch 27:15 cause 42:9, 77:19, 94:19</p>	<p>caveat 7:8 caveats 124:6 center 56:16 certain 5:22, 54:11, 130:18 certainly 101:16, 124:7 certificate 132:1 certify 132:2 chance 61:2, 65:11, 91:19 change 11:5, 11:21, 55:4, 57:8, 57:21, 62:18, 62:19, 62:20, 64:9 changed 9:2, 15:3 changes 119:14, 128:17 changing 11:6 characteristics 42:14, 42:16, 47:21 checked 107:7 checking 92:21 cheshire 31:1, 31:11, 61:11, 67:7, 67:9, 70:2, 70:18, 88:22 child 35:20 children 21:4, 23:14, 23:21, 35:14, 36:15, 37:4,</p>	<p>37:9, 37:10, 90:9 circle 86:9 circles 113:17 circulates 94:12 circulation 29:1, 31:5, 44:22 circumvent 31:9 citizens 84:10, 98:15 clarify 79:22, 91:7, 93:14, 102:12 clarifying 76:1 classified 16:11 clear 85:9, 85:21 clearly 3:18 cline 3:13, 6:5, 6:7, 80:8, 109:14, 124:13, 129:1, 129:13, 130:20 cline's 81:6, 81:12, 82:5 close 51:15 closely 118:14, 127:6 closest 127:1 closing 2:20, 100:19, 117:16, 117:19, 125:12, 130:2 clustering 101:21 clv 71:16, 71:17</p>
---	--	--	---

Transcript of Hearing
Conducted on October 24, 2016

138

code 20:15 coincides 58:3 collaborative 128:6 collaboratively 124:14, 129:16 collar 21:4 come 4:14, 4:17, 8:19, 16:22, 26:8, 29:9, 33:8, 34:8, 37:18, 38:5, 39:6, 48:16, 51:13, 60:22, 61:1, 63:6, 64:2, 68:14, 68:16, 69:2, 74:19, 96:16, 96:17, 97:15, 99:21, 116:13, 121:22, 128:21 comes 38:8, 38:11, 38:19, 70:3, 94:7 comfortable 53:7, 124:10 coming 11:21, 12:1, 12:4, 14:16, 14:19, 19:6, 22:11, 22:17, 23:11, 31:8, 31:17, 33:12, 33:13, 34:4, 34:6, 34:10, 34:15, 39:9, 48:21, 49:16, 50:13, 50:14, 59:2, 71:1, 89:3, 111:4 comment 54:7, 78:14, 90:7	comments 19:16, 125:9, 131:2, 131:4 commercial 15:2, 15:6, 23:10 commissions 130:19 communications 7:1 community 20:12, 20:18, 82:4, 82:19, 82:21, 83:3, 86:12, 127:15 compact 101:20 compatibility 119:4 compatible 118:15, 120:22 components 43:11 concern 10:3, 13:20, 14:12, 19:18, 19:20, 20:10, 22:6, 23:20, 23:21, 24:2, 24:21, 32:9, 34:2, 34:9, 37:11, 37:18, 59:1, 66:13, 82:5, 82:22, 83:4, 84:21, 97:8, 122:4 concerned 33:15, 34:7, 113:22, 114:16, 114:21 concerning 12:7, 20:20, 23:13 concerns 35:1, 78:15 conclude 98:5 concluded 131:18	concludes 100:5, 114:6, 115:2, 129:22 conclusion 126:1 conclusions 45:19 condition 24:13, 123:22, 124:12, 124:13, 124:15, 131:2 conditional 3:9, 9:1, 42:8, 43:5, 123:9, 123:11 conditions 115:19, 129:4, 129:6, 129:11, 129:18 conducted 43:14 cone 111:1 conflict 55:2, 55:5 confused 69:18, 69:22, 88:15, 122:13 congestion 74:9, 74:15, 76:4 connection 24:11, 41:20 conservation 131:7 consider 124:7 considerable 108:21, 109:10 consideration 25:18 considered 105:21 considering 23:13 consistency 48:1 consolidated 102:1	construct 9:1 contact 8:14 continue 70:14, 71:5, 130:13 continued 113:1, 113:3 continuous 113:12 contracts 24:15 contrary 127:13 contributing 66:15 contribution 66:16 conundrum 124:3 convenient 57:12, 58:12 conversely 111:4 converting 78:4, 78:7 cooks 15:19, 53:19 corner 111:1 correct 29:8, 30:17, 43:1, 59:8, 59:9, 59:10, 68:6, 70:5, 85:12, 85:19, 87:9, 105:12, 105:13, 108:3, 108:5, 113:16, 116:22, 119:2, 132:3 correlate 47:8, 75:18 correlation 47:17 correspond 107:12
---	--	--	--

Transcript of Hearing
Conducted on October 24, 2016

139

<p>corresponds 106:8 costly 128:13 could 15:11, 31:22, 57:12, 63:12, 75:7, 78:21, 79:5, 79:22, 81:3, 85:15, 96:20, 96:21, 110:14, 113:21, 123:4 couldn't 44:4, 99:7 council 74:3 counsel 132:7 count 46:10 counted 96:15 counts 44:10, 44:20, 87:19 county 1:2 couple 97:2, 115:11 course 21:13 court 3:4, 3:21 coverage 119:19 covered 102:13 create 22:11 critical 73:15 cross 5:8, 5:11, 9:20, 12:13, 13:2, 13:14, 21:18, 22:15, 30:9, 56:14,</p>	<p>106:10, 122:11, 122:21, 131:17 cross-examination 6:2 crowding 37:11 cu 1:5, 3:7 curb 81:8 current 25:5 currently 20:2, 21:5, 21:11 cut 23:2, 25:16, 26:1, 31:20, 32:4 cuz 12:14, 12:19, 61:14, 64:9, 69:18, 85:11, 90:18, 91:18, 98:5, 99:3, 110:7, 111:20, 123:13 cycle 74:21, 74:22, 75:10, 75:11, 75:12</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>daily 24:3 data 48:2, 52:11, 54:3, 63:21, 64:3, 96:14, 96:20, 96:22 date 99:6, 118:22 dates 130:17 day 16:15, 17:12, 17:13, 17:14, 22:8, 22:10,</p>	<p>37:19, 98:6, 99:18, 99:20, 116:5 days 118:10 daytime 48:7 de 60:4, 60:5, 60:9 dealing 76:3, 97:6 dealt 123:10 decide 77:10 decides 81:14 decrease 47:11 defer 63:9 defining 83:1 delay 74:17, 74:21, 75:2, 75:3, 75:6, 75:14 delays 73:11, 76:2 deliveries 16:14, 16:15, 17:12, 17:13, 18:2, 42:19, 42:22, 47:12, 53:18 delivery 24:16, 46:19 depart 48:9 dependent 56:2 depending 32:4 depends 33:21 depressed 112:15, 114:9</p>	<p>depression 126:6 describe 28:20, 31:5, 43:7, 45:19, 73:13, 101:14, 103:19 desk 68:3 detached 105:7, 105:18, 106:15, 107:16 detail 118:17 determine 43:15, 44:14, 46:11, 50:5 determined 20:7 deters 22:3 developed 10:5 development 1:5, 3:8, 87:16, 88:8, 101:14, 101:19, 101:21, 117:10 developments 82:16, 88:1, 88:6 dickens 31:22, 35:12 different 36:5, 46:2, 46:7, 75:7, 104:22, 106:7 difficult 74:10, 79:1, 122:3 dimensions 106:8 dinner 62:14, 62:15 direct 40:4, 47:17 direction 33:17, 61:8,</p>
--	--	---	--

Transcript of Hearing
Conducted on October 24, 2016

140

81:10 disagreement 10:10 discuss 56:9, 100:8 discussed 31:10, 53:4, 68:3 discussion 54:21, 61:3, 125:4, 127:9, 130:13 discussions 53:2 distance 106:16, 126:13 distances 103:12, 106:13, 107:13 distribute 61:15 distribution 61:2, 61:8, 77:13 diversity 128:3 diverted 65:4, 65:5, 76:19, 76:20 doctors 15:18 doing 18:12, 129:15 done 51:1, 54:10, 82:15, 87:8, 87:18, 97:1, 128:22 dot 78:5, 79:17, 81:14, 83:15, 86:2, 121:4, 121:7, 122:15, 124:5, 124:8, 124:22, 131:3 dot's 79:22, 125:9 down 13:5, 14:17,	21:1, 21:22, 23:4, 29:9, 31:13, 34:8, 38:18, 47:1, 47:16, 61:7, 77:5, 79:7, 110:9, 111:9, 111:13, 113:1 downside 120:19 dramatic 49:6 drive 5:5, 19:15, 20:1, 20:4, 21:19, 21:21, 23:3, 29:17, 30:16, 30:22, 31:3, 31:8, 31:13, 34:9, 35:11, 38:19, 59:16, 65:18, 67:7, 67:9, 69:12, 70:13, 70:14, 70:15 driven 124:2 drivers 116:1, 116:17 driveway 12:20, 20:14, 20:15, 67:8, 117:12 drop 38:13, 54:22 during 39:6, 59:2, 59:6, 62:15, 64:9, 74:19, 77:2, 78:2, 128:18 <hr/> <div style="text-align: center;">E</div> <hr/> e-mail 130:22 e-mailed 3:16 each 13:1, 52:15,	81:10, 106:13 earlier 57:15 early 58:17, 128:12 easement 110:9, 110:20 easily 78:18 east 28:19, 33:20, 56:13, 61:1, 61:18, 62:1, 69:13, 69:16, 70:3, 70:13, 71:11, 72:2, 76:14, 77:5, 104:19, 106:22, 112:21 eastbound 76:16 eastern 78:6 eat 16:20 edge 51:3, 51:8, 111:7, 113:14, 124:18, 124:20 educated 39:22 edward 32:1, 35:14 effect 49:1 effectively 101:20 eight 62:2, 62:4, 128:8 either 29:14, 31:22, 33:13, 34:21, 51:16, 60:22, 83:5 elderly 22:7, 128:4 elementary 35:15, 36:15,	38:7, 38:20 elevation 105:19 eliminating 78:8, 120:18, 122:16 else 12:10, 17:18, 24:6, 39:18, 117:4 emergency 14:18, 78:22, 122:8 emphasize 119:4 emphasizing 119:12 empirical 46:8, 46:14, 54:3, 96:14 employed 132:8 employee 116:9 employees 11:21, 42:19, 45:13, 45:14, 48:8, 48:13, 48:14, 48:16, 51:1, 56:5, 58:13, 59:7, 85:16 encourage 74:9 end 20:4, 20:12, 21:14, 23:15, 23:19, 77:15, 95:16, 106:14, 108:19, 124:15 ends 106:17, 125:4 enforced 115:22 engineer 66:8, 66:9 engineering 40:21, 41:8,
---	---	---	--

Transcript of Hearing
Conducted on October 24, 2016

141

41:13 engineers 15:17, 46:4 enlarged 26:9 enlargement 104:5, 113:18 enough 60:10, 82:20 ensure 116:16 enter 20:17, 76:13, 76:14 entering 60:17 entire 118:7, 118:9, 120:13 entrance 22:20, 25:14, 32:21 especially 23:13, 82:6, 119:5 essentially 7:4, 104:16, 105:1, 108:8 establish 3:10 estate 126:18 estimate 25:1, 89:9, 89:16 evaluate 61:2 evaluating 96:9 evaluation 43:10 even 7:18, 21:3, 54:12, 77:14, 77:21, 111:10, 120:12 evening 44:13, 48:4,	48:12, 59:20, 62:3, 62:9, 62:21, 63:17, 63:18, 71:17, 72:11, 72:19, 77:1, 89:11 ever 120:4 evergreen 110:21 evergreens 114:8 every 22:8, 22:10, 77:7, 77:8, 77:9, 77:16, 77:18, 93:22, 94:5 everybody 21:1, 98:14, 116:12 everybody's 3:20 everyone 3:12, 122:14 everything 47:12, 53:12, 54:2 evidenced 127:4 evident 118:7 exact 47:20 exactly 53:16, 70:22, 73:5, 114:11 examination 2:5, 2:7, 2:10, 2:15, 2:17 examiner 1:9, 2:9, 2:12, 56:3, 58:22, 115:18, 115:21, 125:5, 129:19 examiner's 118:8, 124:10, 124:11	examiner: 3:2, 3:6, 3:19, 4:6, 4:11, 4:13, 4:16, 4:19, 5:2, 5:6, 5:9, 5:13, 5:15, 5:18, 5:20, 6:6, 6:8, 6:10, 7:12, 7:14, 8:5, 8:11, 8:15, 8:17, 8:21, 9:15, 9:18, 9:22, 10:6, 10:14, 10:16, 10:19, 10:22, 11:3, 11:8, 11:12, 11:16, 12:9, 12:11, 12:14, 12:17, 13:9, 13:17, 13:19, 13:21, 14:3, 14:8, 14:13, 14:21, 15:5, 15:11, 15:20, 16:1, 16:4, 16:6, 17:4, 17:8, 17:17, 18:1, 18:8, 18:14, 18:16, 18:22, 19:2, 19:5, 19:8, 19:11, 20:19, 21:7, 21:17, 22:1, 24:5, 24:8, 26:2, 26:10, 26:15, 26:18, 26:20, 27:5, 27:7, 27:11, 27:14, 27:21, 28:10, 28:14, 32:17, 33:3, 33:18, 34:1, 34:3, 34:11, 34:17, 34:22, 35:3, 35:8, 37:15, 38:9, 39:18, 40:2, 40:6,	40:8, 40:10, 40:16, 40:19, 40:22, 41:4, 41:7, 41:11, 41:13, 41:16, 43:22, 44:4, 44:9, 44:12, 44:16, 46:14, 46:17, 46:20, 47:4, 49:9, 49:13, 49:16, 49:22, 50:13, 50:17, 50:20, 51:5, 51:10, 51:18, 52:3, 52:6, 52:17, 52:20, 53:9, 53:14, 53:17, 53:20, 54:4, 55:12, 59:11, 60:4, 60:7, 62:10, 62:22, 63:8, 63:22, 64:5, 64:7, 65:3, 65:5, 65:8, 65:15, 66:7, 67:15, 67:19, 68:1, 68:5, 68:8, 68:10, 68:13, 68:15, 68:18, 68:22, 69:4, 69:7, 69:10, 69:16, 70:6, 70:16, 70:19, 71:5, 71:18, 71:22, 72:12, 72:14, 73:4, 73:10, 73:22, 74:5, 75:19, 76:7, 79:8, 79:20, 80:3, 80:6, 80:12, 80:14, 80:18, 81:2, 81:16, 81:20, 82:1, 82:13, 83:8, 83:11, 83:14,
--	---	---	---

Transcript of Hearing
Conducted on October 24, 2016

142

83:19, 84:5, 84:8, 84:12, 84:16, 84:18, 84:20, 85:6, 85:10, 85:14, 86:1, 86:3, 86:5, 86:16, 88:14, 88:18, 90:13, 90:15, 90:18, 91:17, 91:21, 92:11, 92:15, 92:20, 93:1, 93:5, 93:9, 93:12, 94:2, 95:1, 95:4, 95:9, 95:11, 95:14, 95:21, 97:13, 97:16, 97:18, 97:22, 98:3, 98:8, 98:11, 98:13, 98:19, 98:22, 99:4, 99:11, 99:13, 99:16, 99:20, 100:4, 100:7, 100:13, 100:16, 100:20, 101:2, 101:6, 101:9, 102:20, 102:22, 103:3, 103:7, 103:18, 104:2, 104:15, 105:6, 105:11, 105:14, 107:9, 107:21, 108:2, 108:4, 108:6, 109:12, 109:20, 111:13, 111:17, 112:10, 112:13, 112:18, 112:20, 113:8, 113:19, 114:4, 114:7, 114:14, 114:16, 115:3, 115:6, 115:10, 115:13, 116:19, 117:3, 117:9, 117:13, 117:15,	117:18, 118:5, 118:12, 118:19, 119:11, 121:3, 121:7, 121:18, 122:12, 122:22, 123:13, 123:17, 123:20, 124:5, 125:6, 125:8, 125:17, 125:19, 125:22, 126:5, 126:8, 126:15, 129:9, 129:14, 129:20, 130:1, 130:6, 130:9, 130:12, 130:15, 131:8, 131:10, 131:13, 131:15 example 111:4, 120:5 except 24:17, 118:20 exception 123:1 excluded 118:21 excuse 62:1, 76:17 excused 115:4 exempt 44:3, 44:19 exhaustively 127:22 exhibit 79:9, 79:14, 103:12, 103:16, 103:19, 103:21, 104:3, 108:16, 109:7, 113:10, 120:4, 131:8 exhibits 26:11, 26:13, 118:17, 118:20, 119:3, 119:5 existing 46:9, 66:4, 87:18 exit 20:17, 33:1,	34:21, 76:13, 76:14, 92:7 exiting 60:16 exits 33:4 expect 27:2, 125:7 experience 39:14, 73:11, 74:17 expert 11:14, 39:20, 40:20, 41:7, 41:8, 41:19, 119:16, 126:17, 126:18 explain 76:15, 103:9, 103:12, 106:12, 107:2, 115:18, 115:22 explaining 29:19 expose 111:1 extend 104:17 extensive 53:2 extent 45:8 externally 76:4 extra 120:14 eya 82:15 <hr/> F <hr/> f-a-r-a-c-l-a-s 19:14 fabric 127:14 facade 112:19, 120:11, 120:15 face 106:18, 108:20	facilities 16:10, 22:8, 41:20, 42:4, 42:18, 46:5, 46:9, 53:15, 54:5, 54:18, 96:15 facility 3:10, 9:2, 9:7, 12:7, 12:22, 13:4, 13:15, 14:19, 15:1, 15:2, 15:6, 16:16, 16:17, 24:1, 34:21, 37:17, 39:14, 42:3, 42:15, 45:22, 47:9, 47:10, 47:20, 52:9, 54:7, 57:3, 59:5, 89:22, 109:18, 109:22, 114:21 fact 16:9, 16:11, 18:18, 24:16, 52:9, 52:12, 53:5, 56:5, 57:14, 58:1, 112:14, 119:3, 126:10, 127:1, 127:4, 127:10 factors 37:1 fails 45:4 fair 48:1, 85:9, 112:16 familiar 42:6, 43:4, 45:14, 78:10 families 25:19, 25:20, 105:12 family 10:13, 12:5, 13:16, 22:7,
--	--	---	---

Transcript of Hearing
Conducted on October 24, 2016

143

101:17, 102:2, 102:8, 103:4, 104:10, 104:13, 104:21, 105:5, 105:17, 106:15, 106:17, 107:16, 114:18 faracclas 2:4, 2:7, 2:13, 5:4, 19:10, 19:14, 27:20, 27:21 faracclas: 5:4, 5:7, 13:11, 19:10, 19:13, 20:20, 21:8, 21:19, 22:2, 22:16, 24:7, 27:20, 28:6, 28:8, 28:13, 32:19, 33:5, 33:20, 35:2, 35:4, 38:10, 86:21, 87:2, 87:14, 87:21, 88:9, 88:17, 88:19, 89:2, 90:14, 90:17, 90:20, 91:20, 92:1, 92:18, 92:21, 93:2, 93:6, 93:10 fastest 25:21 father 22:9 fault 25:10, 25:17 fee 45:6 feet 78:7, 78:17, 78:20, 79:1, 79:2, 79:13, 80:2, 80:4, 80:10, 80:15, 80:20, 80:21,	81:1, 81:7, 81:8, 81:15, 83:9, 83:10, 85:1, 85:22, 102:3, 102:7, 102:11, 102:16, 103:6, 106:1, 106:2, 106:16, 106:19, 107:1, 107:16, 108:20, 110:20, 120:7, 120:9, 126:12, 126:14 fell 92:22 female 3:15, 4:8, 4:12, 4:15, 4:18, 8:4, 75:1, 76:6, 83:17, 83:20, 84:3, 84:7, 84:11, 84:15, 84:17, 84:19, 116:20, 117:1, 117:6, 117:10, 117:14, 130:4, 130:7, 130:11, 130:14, 131:14 few 42:5, 116:1 fewer 44:18, 51:11, 51:12 field 93:3 fields 92:10 figure 68:20 file 26:18, 123:4 filed 128:7 fill 80:11 filling 78:9	final 40:4, 86:9, 95:13, 109:6, 115:8 finally 128:5 financial 132:9 find 9:11, 50:8, 123:14, 123:18 finding 120:20, 124:17 fine 3:17, 6:21, 38:14, 39:2, 81:6, 81:11, 90:21, 92:4, 101:1, 124:9, 130:8 finish 71:2, 90:19 finished 7:19, 100:2 finishing 21:10 fire 20:15, 33:1, 78:22, 79:4, 81:9, 85:6, 85:8, 122:8 firm 11:11 first 4:20, 6:14, 7:16, 30:15, 57:19, 94:10, 100:22, 107:14, 128:13 fit 18:12 five 28:17, 48:14, 48:15, 48:21, 48:22, 49:14, 49:17, 50:15, 53:5, 62:9, 64:14, 64:18,	75:2, 89:15 fleming 5:7, 5:8, 5:14, 5:17, 5:18, 6:3, 6:7, 6:8, 7:2, 10:5, 19:17, 20:13, 21:20, 23:4, 24:12, 32:3, 33:8, 56:13, 67:7, 72:9, 72:12, 78:4, 79:11, 84:10, 85:11, 85:19, 92:3, 92:6, 92:10, 92:12, 93:3, 98:16, 100:8, 104:11, 105:19, 110:1, 110:5, 111:14, 111:17, 111:21, 112:3, 112:5, 112:6, 112:7, 112:22, 114:19, 114:20, 117:22, 119:7, 120:16, 121:9, 121:11, 122:5, 124:19, 129:11 flemings 6:4 flowing 74:18 focus 76:9 focused 27:18 folks 55:9, 89:14 follow 122:10 follow-up 97:1 following 115:17 food 12:2 foot 79:3, 80:8,
---	---	--	--

Transcript of Hearing
Conducted on October 24, 2016

144

81:10, 81:17, 81:18, 85:3, 85:4, 85:8, 108:15, 108:18, 109:8 foregoing 132:3 forest 131:7 forget 111:14 forgive 31:3 formal 116:7, 116:17 formalities 5:22 formula 73:17, 73:19 forth 56:16 fortunately 26:5 forward 3:18, 124:9 four 28:17, 62:8, 77:15, 119:22 frankly 34:7, 34:15, 36:18 free 25:13, 74:18 frequently 18:9 friday 39:10, 94:17 front 57:3, 57:19, 82:14, 83:22, 102:9, 104:11, 105:2, 105:3, 105:19, 113:6, 113:14, 116:6, 123:14, 124:18, 124:19, 125:3 frontage 113:7	fronts 56:11 full 26:17 further 92:13, 104:17, 104:19, 110:17, 111:13, 111:20, 115:6, 119:13 future 88:8	67:9, 67:10, 67:12, 67:21, 68:11, 69:11, 69:20, 70:2, 70:4, 70:21, 71:11, 72:3, 73:2, 88:21, 91:9 georgia 42:5 getting 4:11, 35:18, 35:19, 36:5, 51:15, 69:18, 69:22, 117:11 give 6:19, 72:20, 93:19 given 110:3, 120:15 giving 91:18 glad 19:4, 131:16 glasses 29:5 glimpses 127:19 go 4:2, 9:22, 10:15, 21:4, 21:22, 22:8, 23:3, 24:2, 26:21, 29:21, 33:22, 47:5, 47:15, 47:16, 56:19, 61:9, 61:12, 61:17, 61:18, 62:6, 62:7, 65:21, 65:22, 67:19, 72:1, 72:16, 73:11, 77:5, 84:4, 87:18, 91:13, 95:22, 101:4, 106:6, 116:4, 123:3, 124:6, 124:9	goal 32:4 goes 7:15, 30:1, 56:14, 56:15 going 3:17, 3:18, 7:15, 8:22, 10:11, 11:21, 12:3, 14:18, 15:21, 16:19, 16:20, 17:20, 18:5, 22:11, 22:17, 25:9, 32:12, 33:13, 33:14, 34:20, 49:10, 62:1, 72:16, 76:16, 77:19, 97:9, 110:6, 110:9, 111:11, 111:18, 112:1, 112:17, 112:22, 118:19, 130:16 gone 20:12, 55:6, 55:10 gonna 7:17, 11:16, 19:20, 20:9, 20:17, 22:9, 22:11, 24:1, 26:20, 26:21, 27:15, 32:4, 33:11, 35:19, 37:19, 37:21, 41:4, 47:10, 55:22, 61:15, 64:2, 65:10, 66:7, 72:15, 74:19, 79:6, 79:11, 79:16, 82:7, 84:4, 89:9, 89:12, 92:8, 96:17, 105:10, 110:18, 121:5, 125:9, 129:16
--	--	--	--

Transcript of Hearing
Conducted on October 24, 2016

145

<p>good 4:3, 61:8, 95:11, 97:5, 99:20, 114:8, 127:18 grabbing 21:3 granted 21:13, 37:5 great 20:7, 29:5, 90:7, 92:18 greater 119:22, 120:9 greatest 126:21 green 75:13 greenlawn 36:9, 36:12, 38:8, 38:21 grosvenor 3:11, 5:1, 5:2, 5:11, 8:10, 13:13, 20:13, 21:21, 23:2, 23:6, 24:17, 24:18, 25:15, 25:16, 31:21, 32:14, 32:17, 32:21, 33:14, 37:6, 56:12, 56:20, 60:20, 66:14, 66:20, 67:1, 67:3, 67:6, 67:7, 67:8, 67:13, 70:10, 72:9, 72:12, 76:17, 76:19, 76:22, 77:6, 77:9, 77:10, 82:2, 82:14, 87:15, 88:6, 88:15, 92:14, 98:16, 101:16, 102:2, 103:22, 104:9, 105:8, 109:2,</p>	<p>110:5, 113:2, 113:6, 122:6 group 104:12 grouping 104:18, 104:20, 105:3, 106:18, 106:21, 108:19, 111:6 groupings 57:6 growth 74:12 guess 49:9, 51:2, 63:4, 79:9, 82:3, 83:4, 84:21, 109:12, 110:6, 121:21 guests 34:15 guidelines 52:2, 52:4, 52:5 gutter 109:17 guys 87:8</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>half 13:4, 17:13, 17:14, 20:5, 77:10, 77:14, 78:7, 80:2, 80:4, 80:9, 81:15, 81:18, 93:19, 94:3, 94:5, 122:17, 125:3 hand 4:7, 104:4, 105:8, 107:11, 113:17 handle 78:18 hands 7:20</p>	<p>happened 95:18, 98:9, 99:14, 99:15 happens 23:7, 29:9, 109:3, 125:8 hard 9:11, 12:19, 60:11, 128:16 harder 60:13 harm 42:9, 86:12 harris 2:6, 2:8, 2:11, 2:16, 2:18, 2:21, 13:21, 13:22, 14:3, 26:2, 28:1, 37:20, 38:1, 39:22, 86:6, 117:15, 131:1 harris: 4:3, 6:5, 6:7, 6:21, 7:13, 14:5, 16:5, 16:7, 17:10, 17:16, 18:18, 19:1, 24:10, 26:5, 26:12, 26:16, 26:19, 27:4, 27:10, 27:13, 38:2, 38:12, 39:16, 40:1, 40:4, 40:7, 40:9, 40:17, 40:20, 41:1, 41:17, 45:11, 55:13, 60:15, 64:8, 66:11, 69:13, 76:8, 79:21, 80:4, 80:7, 80:13, 81:22, 86:8, 90:12, 94:21, 97:11, 100:3, 100:5, 100:10, 100:14,</p>	<p>100:17, 101:1, 101:4, 101:12, 103:8, 106:11, 110:13, 113:9, 113:21, 114:5, 114:11, 114:15, 115:1, 115:8, 115:11, 115:16, 117:17, 118:3, 118:6, 118:13, 119:2, 119:12, 121:6, 121:13, 122:13, 123:7, 123:16, 123:19, 124:4, 124:8, 125:7, 125:11, 125:18, 125:20, 126:3, 126:7, 126:10, 126:16, 129:10, 129:15, 129:21, 131:5, 131:9, 131:12 harrison 4:4 hate 130:10 head 18:15, 56:17, 70:12 heading 70:7, 70:8, 70:17, 76:20 hear 53:9, 82:6, 117:19, 127:8 heard 14:6, 59:12, 59:13, 63:3, 66:12, 109:22, 119:15, 119:21, 120:2 hearing 1:8, 1:9, 2:9, 2:12, 3:2, 3:5, 3:6, 3:7, 3:19, 4:6, 4:11, 4:13, 4:16, 4:19, 5:2, 5:6, 5:9, 5:13,</p>
---	---	--	---

Transcript of Hearing
Conducted on October 24, 2016

146

5:15, 5:18, 5:20, 5:21, 6:6, 6:8, 6:10, 7:12, 7:14, 8:5, 8:11, 8:15, 8:17, 8:20, 8:21, 9:15, 9:18, 9:22, 10:6, 10:14, 10:16, 10:19, 10:22, 11:3, 11:8, 11:12, 11:16, 12:9, 12:11, 12:14, 12:17, 13:7, 13:9, 13:17, 13:19, 13:21, 14:3, 14:8, 14:13, 14:21, 15:5, 15:11, 15:20, 16:1, 16:4, 16:6, 17:4, 17:8, 17:17, 18:1, 18:8, 18:14, 18:16, 18:22, 19:2, 19:5, 19:8, 19:11, 20:1, 20:6, 20:19, 21:7, 21:17, 22:1, 24:5, 24:8, 26:2, 26:10, 26:15, 26:18, 26:20, 27:5, 27:7, 27:9, 27:11, 27:14, 27:21, 28:7, 28:10, 28:14, 32:17, 33:3, 33:18, 34:1, 34:3, 34:11, 34:17, 34:22, 35:3, 35:8, 37:15, 37:16, 38:9, 39:18, 40:2, 40:6, 40:8, 40:10, 40:16,	40:19, 40:22, 41:4, 41:7, 41:11, 41:13, 41:16, 43:22, 44:4, 44:9, 44:12, 44:16, 46:14, 46:17, 46:20, 47:4, 49:9, 49:13, 49:16, 49:22, 50:13, 50:17, 50:20, 51:5, 51:10, 51:18, 52:3, 52:6, 52:17, 52:20, 53:9, 53:14, 53:17, 53:20, 54:4, 55:12, 56:3, 58:22, 59:11, 60:4, 60:7, 62:10, 62:22, 63:8, 63:22, 64:5, 64:7, 65:3, 65:5, 65:8, 65:15, 66:7, 67:15, 67:19, 68:1, 68:5, 68:8, 68:10, 68:13, 68:15, 68:18, 68:21, 68:22, 69:4, 69:7, 69:10, 69:16, 70:6, 70:16, 70:19, 71:5, 71:18, 71:22, 72:12, 72:14, 73:4, 73:10, 73:22, 74:5, 75:19, 75:21, 76:7, 78:3, 79:8, 79:20, 80:3, 80:6, 80:12, 80:14, 80:18, 81:2, 81:16, 81:20, 82:1, 82:13, 83:8,	83:11, 83:14, 83:19, 84:5, 84:8, 84:12, 84:16, 84:18, 84:20, 85:6, 85:10, 85:14, 86:1, 86:3, 86:5, 86:16, 88:14, 88:18, 90:13, 90:15, 90:18, 90:19, 91:17, 91:21, 92:11, 92:15, 92:20, 93:1, 93:5, 93:9, 93:12, 94:2, 95:1, 95:4, 95:9, 95:11, 95:14, 95:21, 97:13, 97:16, 97:18, 97:22, 98:3, 98:5, 98:8, 98:11, 98:13, 98:19, 98:22, 99:4, 99:11, 99:13, 99:16, 99:20, 100:4, 100:7, 100:13, 100:16, 100:20, 101:2, 101:3, 101:6, 101:8, 101:9, 102:20, 102:22, 103:3, 103:7, 103:18, 104:2, 104:15, 105:6, 105:11, 105:14, 107:9, 107:21, 108:2, 108:4, 108:6, 109:12, 109:20, 111:13, 111:17, 112:10, 112:13, 112:18, 112:20, 113:8, 113:19, 114:4, 114:7, 114:14, 114:16, 115:3, 115:6, 115:10,	115:13, 115:18, 115:21, 116:19, 117:3, 117:9, 117:13, 117:15, 117:18, 118:5, 118:8, 118:9, 118:12, 118:19, 119:1, 119:11, 121:3, 121:7, 121:18, 122:12, 122:22, 123:13, 123:17, 123:20, 124:5, 124:10, 124:11, 125:4, 125:6, 125:8, 125:17, 125:19, 125:22, 126:5, 126:8, 126:15, 129:9, 129:14, 129:18, 129:20, 130:1, 130:6, 130:9, 130:12, 130:15, 130:16, 130:17, 131:8, 131:10, 131:13, 131:15, 131:17, 131:18 hearings 1:1, 127:6 height 102:11, 107:2, 108:11, 108:18 heights 32:16, 32:17, 32:22, 34:5, 37:8, 66:15, 66:20, 67:1, 67:3, 70:11, 82:2, 87:3, 87:15, 88:6, 88:16, 92:14, 101:16, 102:3, 104:1, 104:9, 105:9, 108:9, 109:2, 113:6 help 112:1 helpful 110:14
---	--	---	--

Transcript of Hearing
Conducted on October 24, 2016

147

<p>helps 35:1 here 3:15, 4:4, 6:16, 7:5, 7:10, 10:17, 15:17, 19:4, 28:9, 29:9, 29:15, 29:16, 29:17, 30:8, 30:11, 31:19, 31:22, 32:6, 33:12, 35:12, 39:20, 48:18, 54:13, 62:16, 67:6, 73:7, 82:7, 95:19, 99:18, 104:16, 107:19, 107:20, 108:18, 109:9, 110:16, 110:21, 111:9, 111:12, 113:12, 114:9, 120:8 here's 29:8 hereby 132:2 hidden 127:8, 127:10, 127:11, 127:16 high 23:7, 23:14 higher 55:21, 63:18, 73:2, 76:2, 96:21 himself 9:22, 11:17, 35:20 hit 32:6 hollies 111:6 home 7:2, 20:12, 28:8, 38:19, 65:6, 65:7, 102:2, 104:10,</p>	<p>106:15 homeowner 5:1 homes 10:13, 25:11, 25:13, 28:16, 32:11, 32:18, 33:11, 101:17, 101:18, 102:9, 104:13, 104:18, 104:20, 105:7, 105:9, 105:18, 106:18, 106:21, 107:16, 108:18, 109:9, 112:3, 114:18 homesites 112:6 hopefully 21:9 horrible 9:6 hoses 21:12 hour 25:22, 43:19, 44:14, 44:18, 46:12, 48:3, 48:4, 49:8, 49:11, 50:4, 50:5, 50:6, 50:8, 54:6, 54:15, 59:2, 59:7, 59:19, 59:20, 60:3, 62:1, 62:5, 62:21, 63:17, 63:18, 64:3, 67:4, 71:16, 71:17, 74:20, 76:9, 76:10, 77:2, 77:15, 77:19, 87:13, 88:11, 88:13, 88:22, 89:1, 89:8, 89:11, 89:17, 90:8, 93:19, 94:3,</p>	<p>94:6, 95:17, 98:2 hours 12:21, 43:16, 44:6, 46:11, 62:13, 62:14, 77:1, 89:7, 95:7 house 10:3, 15:9, 25:21, 28:10, 34:15, 111:2 houses 13:16, 37:4, 83:22, 102:14, 103:13, 110:1, 110:5, 110:10, 114:1, 126:14 housing 128:3 however 35:13, 68:4, 116:9 huge 13:15, 24:2 hundred 25:19, 47:9, 106:19, 108:15, 108:20 hundreds 46:6 hurst 31:22, 36:9, 36:12, 36:14, 38:7, 38:21 <hr/><p style="text-align: center;">I</p><hr/><p>i- 67:10, 72:3 id 47:19 idea 72:20 identified 109:7, 129:13 identify 3:22, 4:21, 11:16, 87:22, 106:12, 113:10</p> </p>	<p>idle 115:20 idling 116:16 illustrated 109:9 image 105:15 images 105:7 imagine 37:3 immediately 103:10, 111:9, 114:1, 127:3 impact 43:18, 45:7, 59:15, 60:5, 63:3, 63:5, 67:5, 77:19, 96:9, 114:17, 114:19, 126:20 impacted 92:8 impacts 60:14 implied 47:21 important 106:4 impose 122:19 imposed 104:7 improves 58:19 inaudible 36:11, 37:14, 85:5, 95:8, 117:14, 130:11 inaudible) 3:2, 4:4, 4:9, 9:10, 12:2, 12:6, 13:12, 14:7, 14:17, 15:22, 16:21, 18:18, 26:6, 27:12, 33:5,</p>
---	---	--	---

Transcript of Hearing
Conducted on October 24, 2016

148

33:16, 34:12, 39:11, 39:15, 40:11, 41:21, 42:19, 44:21, 53:1, 56:21, 60:14, 64:18, 66:5, 66:10, 69:11, 72:14, 74:3, 76:18, 80:7, 80:11, 84:1, 84:4, 84:7, 85:4, 90:9, 91:15, 93:15, 93:18, 95:3, 97:9, 97:14, 98:20, 98:21, 100:13, 109:13, 111:8, 112:9, 113:15, 116:1, 116:10, 116:20, 116:21, 117:6, 117:8, 119:18, 120:2, 123:15, 125:7, 125:20, 126:4, 130:10 inbound 55:10, 77:3 include 42:21, 46:15, 87:2, 87:9, 88:7, 112:4, 120:12 included 46:22, 90:1 includes 56:5, 124:16 including 130:18 inconvenient 57:21 increase 25:6, 25:9, 47:10, 77:22, 91:3, 106:3 increasing 57:9 indicated 108:13, 113:12	indicates 48:2 individuals 128:21 influx 25:14 informal 5:21 information 63:9, 63:10, 63:16, 66:19, 91:18 infrastructure 74:14 inherent 42:13, 42:16 instance 59:1 instead 78:9, 84:14 institute 46:3 instruct 116:6 intention 100:10, 129:17 interest 83:1, 114:12, 132:9 internal 72:20 interrupt 112:11 intersection 30:8, 30:15, 30:19, 30:21, 61:11, 69:19, 70:11, 71:12, 71:15, 72:2, 72:6, 73:15, 74:18, 75:9, 88:21, 91:9 intersection's 72:20 intersections 30:8, 43:19, 50:7, 50:9, 67:6, 67:16,	71:3, 71:8, 71:13, 74:17, 87:19, 88:4 introduce 90:16 introduction 4:1, 4:9 involve 78:5 involved 98:17 involves 43:10 iraola 2:15, 100:14, 101:2, 101:9, 115:2 iraola's 101:1 iraola: 101:11, 102:21, 103:2, 103:5, 103:21, 104:3, 104:16, 105:7, 105:13, 105:15, 107:12, 107:22, 108:3, 108:5, 108:7, 109:19, 111:16, 111:19, 112:12, 112:14, 112:19, 113:4, 115:5, 115:7 issue 19:17, 37:21, 53:4, 78:2, 86:3, 86:4, 123:10 issues 86:13 it'll 49:7 ite 46:3, 47:1, 47:6, 47:19, 47:20, 48:2, 49:6, 52:3, 52:9, 52:11, 53:10, 55:20,	55:22, 63:15, 64:3 items 130:21 itself 10:12, 72:9 <hr/> J <hr/> jackie 1:22, 132:2, 132:15 january 67:2 jazz 90:2 job 1:20, 127:18 johnson 90:10, 119:15 joint 130:19 <hr/> K <hr/> keep 11:6, 72:16, 124:12 kids 21:2, 23:16, 36:7, 38:5 kind 46:21, 54:1, 60:1, 61:4, 75:7, 84:6, 87:6, 106:5, 106:8, 107:15, 110:22, 111:7, 113:16 kindly 26:3 kings 70:12, 82:1 kingsview 81:20 kingswood 77:11 know 4:9, 4:10, 6:16, 10:18,
--	---	--	--

Transcript of Hearing
Conducted on October 24, 2016

149

11:13, 13:5, 17:1, 18:6, 18:9, 18:11, 22:17, 29:20, 30:5, 32:21, 33:17, 46:17, 47:4, 48:9, 49:4, 49:6, 50:21, 51:8, 52:22, 53:4, 54:9, 54:21, 55:20, 58:14, 58:15, 59:12, 59:13, 59:21, 61:5, 61:11, 61:14, 62:2, 62:8, 62:17, 63:3, 63:6, 65:1, 65:3, 65:12, 75:13, 76:1, 77:11, 79:4, 79:16, 81:7, 82:4, 82:14, 83:15, 84:18, 87:5, 92:11, 95:20, 96:8, 98:7, 98:22, 110:3, 110:10, 114:19, 115:19, 118:2, 120:10, 121:1, 121:4, 122:4, 123:3, 127:15, 128:19, 130:9 knowing 31:3 knowledge 16:15, 17:6, 17:7, 39:13, 82:3, 113:1 known 45:2	lack 78:9 land 46:7, 104:8 landscape 80:11, 104:4, 109:10, 112:9 landscaped 120:3, 120:14, 127:20 landscaping 78:10, 108:12, 108:21, 109:1, 119:8, 120:6, 120:8, 120:17, 120:19, 122:3, 122:18, 124:2, 125:14, 125:15, 126:2, 126:9, 126:11 lane 3:11, 5:1, 5:2, 8:10, 24:17, 25:15, 31:22, 32:21, 56:13, 60:20, 67:6, 67:7, 67:8, 67:13, 72:9, 73:15, 76:17, 77:6, 77:9, 77:10, 79:3, 85:11, 85:19 lanes 73:19, 80:8, 81:10, 81:17, 85:4 larger 25:13, 113:16 largest 48:10 last 7:6, 8:9, 27:17, 128:18, 130:16 lat 44:3 late 58:17, 128:8	later 59:3 latr 43:14, 43:20, 44:19, 45:9, 52:4, 52:5, 59:22, 71:8 laughing 9:15, 9:18, 9:19 laughter 9:13 laws 23:12 least 23:17, 23:19, 33:6 leaves 80:15, 94:11 leaving 11:22, 48:22, 49:14, 50:15, 79:13 left 23:5, 31:20, 33:8, 34:20, 105:8 leg 67:22 legislative 75:22 length 75:10 lengthy 98:6 lenhart 2:10, 4:1, 14:7, 14:9, 40:7, 40:17, 41:18, 86:18, 94:5, 99:7, 101:4, 117:20 lenhart's 100:5 lenhart: 40:15, 41:6, 41:10, 41:12, 41:15, 44:2,	44:7, 44:10, 44:13, 44:17, 46:16, 46:19, 46:22, 47:6, 48:20, 49:12, 49:15, 49:19, 50:4, 50:16, 50:19, 51:4, 51:6, 51:12, 51:20, 52:5, 52:7, 52:19, 52:22, 53:12, 53:16, 53:18, 53:21, 59:17, 60:6, 60:9, 62:20, 63:7, 63:12, 64:1, 64:6, 65:4, 65:7, 65:14, 65:16, 66:3, 67:18, 67:20, 68:2, 68:7, 68:9, 68:11, 68:14, 68:17, 69:3, 69:6, 69:8, 69:11, 69:14, 70:5, 70:7, 70:17, 71:4, 71:7, 71:20, 72:1, 72:13, 72:18, 73:9, 73:14, 74:2, 74:6, 75:5, 79:19, 80:17, 80:20, 81:3, 81:17, 82:9, 83:7, 83:10, 83:12, 84:2, 85:3, 85:8, 85:13, 85:20, 86:2, 86:4, 87:1, 87:11, 87:15, 87:22, 88:20, 92:13, 92:16, 94:7, 94:16, 95:8, 96:2, 96:5, 96:8,
--	---	---	--

Transcript of Hearing
Conducted on October 24, 2016

150

96:13, 97:4 less 23:10, 37:11, 43:19, 43:22, 44:1, 44:2, 47:15, 52:10, 59:22, 60:2, 60:3, 87:12, 94:8, 111:20, 119:18, 119:19 let's 3:21, 58:14, 60:13, 65:17, 111:2, 125:6 letter 129:8 letting 35:7 level 66:13, 74:12, 74:15 levels 76:4 light 23:1, 25:22, 29:15, 29:16, 30:20, 31:12 lights 31:9, 32:7 likelihood 57:10, 58:19 likely 49:7, 59:4, 59:7, 122:15 limit 71:18 line 106:2 linens 16:21 list 18:21 listed 130:22 listing 71:2 literally 21:3	little 6:15, 9:5, 10:8, 18:5, 19:12, 47:15, 47:16, 49:7, 55:21, 60:13, 63:18, 65:9, 74:10, 92:9, 94:8, 122:13, 128:20 live 5:5, 5:16, 8:10, 15:8, 93:18 lives 5:17, 69:14, 87:4 living 12:22, 16:10, 16:19, 23:22, 39:13, 42:14, 46:5, 46:7, 46:9, 50:22, 96:14 llc 1:5, 3:8 loaded 102:5, 102:7, 102:9, 105:4 lobby 116:13 local 43:11, 43:13, 60:14 located 3:11, 13:3 location 110:4 lone 19:15, 20:1, 20:4, 20:13, 21:19, 21:21, 22:22, 23:3, 30:13, 30:14, 30:16, 30:21, 31:8, 31:12, 31:13, 33:13, 34:8, 35:11,	38:18, 59:15, 67:21, 69:9, 69:12, 69:13, 69:16, 69:18, 69:20, 69:21, 70:1, 70:3, 70:13, 70:14, 71:11, 71:14, 72:2, 76:22, 77:11, 77:14 long 5:5, 7:3, 55:6, 81:3, 83:8, 84:22, 118:10 look 10:4, 45:9, 49:20, 50:5, 50:11, 51:15, 54:14, 60:11, 60:13, 63:16, 105:10, 105:18 looked 46:2, 48:5, 50:10, 67:5, 89:6, 91:8 looking 47:2, 61:4, 89:14, 110:16 looks 47:6, 73:17 loop 56:14, 67:11, 70:10, 125:12 loops 56:16 lose 127:2 lot 9:16, 12:3, 14:18, 15:8, 15:21, 16:19, 16:20, 17:3, 19:16, 20:2, 20:8, 22:18, 22:20, 23:16, 36:7, 82:16, 96:3, 102:1, 102:12, 102:13,	112:1, 119:19, 122:10, 126:2, 126:8, 127:8 lots 22:5, 23:8, 101:17, 102:2, 102:6, 103:2 love 22:3, 131:15 low 59:21, 60:10 lower 37:5, 62:18, 74:8, 96:21, 109:3, 110:1 lynn 1:9 <hr/> M <hr/> m-a-r-i-e-l-l-a 8:9 m-a-r-i-s-s-a 19:14 made 57:15, 119:14, 127:18, 127:22 main 48:7, 106:18, 108:20 maintenance 21:6 major 84:21 majority 55:9, 64:11, 64:13, 64:19, 89:10 make 8:2, 28:3, 40:13, 57:21, 66:16, 68:18, 70:21, 74:10, 87:7, 99:7, 100:18, 116:2, 116:7, 118:18, 119:3, 120:20, 124:17, 125:15, 128:17, 130:18,
--	---	---	--

Transcript of Hearing
Conducted on October 24, 2016

151

<p>131:4 makes 57:12, 58:12 making 27:11, 93:7 male 3:14, 32:16, 101:5, 101:7 mall 56:15 managerial 64:17 managers 49:17 manila 4:22 manor 5:5, 5:12, 7:3, 29:16, 30:11, 31:10, 38:18, 67:12, 67:21, 68:9, 68:11, 69:6, 69:8, 69:17, 69:21, 70:1, 70:15, 70:20, 71:14, 71:15, 129:6, 129:7 manual 46:4 many 11:21, 16:15, 18:7, 28:15, 37:1, 40:18, 43:16, 46:12, 50:11, 51:1, 51:7, 51:13, 58:2, 61:22, 70:20, 76:20, 90:2, 116:10 map 26:6, 32:20 maplewood 13:4 mariella 2:3, 2:5, 8:7, 20:10 marissa 2:4, 2:7, 5:4,</p>	<p>19:10, 19:13 mark 28:4 maryland 1:10 mass 123:6 master 127:21, 128:1, 128:2 math 18:13 mathematical 73:17 matter 3:7, 29:14, 36:2, 41:21 maximum 55:14, 55:16, 102:10 maybe 4:9, 17:1, 17:2, 18:16, 55:20, 60:9, 62:7, 62:11, 62:17, 65:5, 75:8, 77:4, 116:12 mean 12:2, 12:22, 29:12, 50:14, 51:2, 55:9, 59:18, 73:10, 75:2, 76:15, 77:14, 80:16, 82:22, 83:11, 95:19, 96:5, 102:13, 111:15, 118:8, 121:12, 121:21, 123:7, 126:11, 127:12 meaning 87:3 means 65:16, 75:4 measure 60:2 medical 53:21, 130:22</p>	<p>meeting 11:18, 79:17 meetings 128:13 meets 81:9 members 22:7 memory 44:5 mention 58:8, 110:18 mentioned 20:10, 32:7, 42:22, 55:1, 58:22, 63:2, 67:16, 87:20, 110:8, 116:4, 125:12 message 127:12 method 101:19, 101:20 methodologies 75:7 methodology 73:16 metro 22:18, 23:2, 32:5, 56:20, 91:16 middle 9:11, 25:22, 38:10, 38:15, 105:3, 106:18 might 6:19, 23:18, 58:17, 60:14, 74:19, 74:20, 74:21, 75:14, 77:13, 83:2, 111:1, 111:10 miguel 2:15 mile 9:9, 13:1, 13:5 miles 12:22</p>	<p>min 60:4 mind 17:20, 124:12 mine 35:13 minimis 60:5, 60:9 minimum 81:8, 85:4, 85:9, 102:16, 103:5, 106:1, 120:1 minor 122:2, 123:4 minus 80:14 minute 3:3, 50:12, 56:17, 56:18, 94:13 minutes 26:22, 44:15, 75:11, 77:7, 77:8, 77:10, 77:16, 77:18, 94:1, 94:8, 94:9, 116:11, 116:12, 116:16 misinformed 99:9 miss 57:20 mitigation 45:6 moment 11:17, 73:12, 78:2, 125:13, 126:22 monday 1:11, 39:10, 94:16 montgomery 1:2, 56:15 months 21:9, 128:8 more 9:2, 14:11,</p>
---	---	---	---

Transcript of Hearing
Conducted on October 24, 2016

152

17:2, 25:19, 37:4, 37:10, 39:16, 43:17, 47:14, 49:7, 50:2, 58:12, 58:13, 63:10, 67:4, 74:7, 74:10, 74:11, 94:8, 97:17, 98:1, 106:4, 107:22, 114:16, 116:14, 120:17, 120:19, 121:16, 124:14 morning 3:16, 4:3, 7:5, 21:2, 35:7, 36:4, 38:6, 39:10, 44:11, 48:3, 49:7, 57:7, 59:19, 61:4, 62:3, 62:8, 63:17, 63:19, 67:17, 68:3, 71:16, 72:11, 72:18, 88:12, 93:17, 97:12, 128:21 most 35:13, 39:5, 39:8, 42:1, 64:2, 120:3, 127:2, 128:10, 128:11 mostly 19:18 mother 22:9 move 54:5, 116:14, 124:14 moved 25:11 much 6:10, 39:19, 62:18, 73:6, 96:16, 110:5, 111:17, 131:13	must 42:7 myself 66:9 <hr/> N <hr/> name 4:22, 8:6, 8:7, 8:8, 8:9, 19:9, 22:13, 27:16, 27:17, 35:14 names 31:6 nationally 46:5 nature 14:20, 128:6 near 22:18, 22:19 nearby 24:3, 88:1 necessarily 23:12, 23:22 necessary 33:1, 54:19, 120:20 need 7:11, 8:8, 12:21, 16:21, 16:22, 51:15, 54:12, 54:13, 60:22, 65:20, 82:7, 82:11, 84:9, 90:18, 123:20, 124:17, 131:5 needed 20:15, 43:21, 109:15, 125:15 needs 4:1, 125:5, 127:8 negatives 122:12 negligible 59:18, 59:22 neighbor 126:14	neighbor's 120:17, 123:9 neighborhood 5:10, 10:12, 11:5, 22:12, 23:11, 23:14, 25:16, 26:1, 26:6, 28:12, 31:8, 32:6, 72:8, 72:21, 77:20, 118:16, 120:22, 124:1, 128:9 neighbors 27:8, 118:14, 119:15, 126:22, 129:1, 129:12 neither 132:7 never 120:18 new 7:2, 11:2, 20:11, 66:3, 90:16, 91:18, 103:11, 117:10 newer 33:11 newly 10:4 next 40:2, 40:4, 119:18 nice 11:18 night 9:11 nobody 26:21, 82:17, 87:4 noise 9:10, 14:12, 14:13, 14:15, 16:14, 48:19, 97:18 non-opposition 24:12 none 24:15	normally 97:9, 119:20 north 29:7, 29:12, 30:16, 30:21, 38:15, 45:2, 61:6, 61:9, 62:7, 69:20, 70:8, 70:12, 70:14, 70:17, 71:14, 71:20, 72:5, 73:20, 111:3 northbound 111:3 note 6:22, 119:5, 125:11, 128:2, 128:5, 129:3 noted 126:22 nothing 8:3, 25:17, 32:10, 37:2, 40:14 notice 77:22, 98:15, 99:5, 115:6 noting 24:15 number 17:12, 33:12, 45:13, 45:14, 46:11, 47:3, 47:7, 47:13, 47:17, 47:18, 55:15, 56:2, 61:13, 67:2, 67:6, 73:19, 73:20, 75:1, 87:5, 103:16, 109:7 number's 55:22 numbers 11:19, 52:14, 55:20, 61:16 numerous 119:21
---	--	---	--

Transcript of Hearing
Conducted on October 24, 2016

153

nurses 15:18	obstructing 110:10	27:14, 28:3, 28:8, 28:15,	100:7, 100:16, 100:20, 100:22,
O	obvious 128:11	29:2, 29:3, 29:5, 29:18,	101:9, 101:11, 102:19, 102:22,
o'clock 49:20, 55:2, 55:5, 55:11, 58:4, 89:12, 89:13, 93:17	obviously 21:14, 37:8	30:6, 30:15, 30:18, 31:2, 31:4, 31:7,	103:7, 104:2, 105:14, 107:2, 107:21, 108:6, 109:19, 109:20,
oak 5:5, 5:12, 5:16, 19:15, 20:1, 20:4, 20:13, 21:19, 21:21, 22:22, 23:3, 29:16, 30:11, 30:13, 30:14, 30:16, 30:22, 31:8, 31:11, 31:13, 33:13, 34:8, 35:11, 38:18, 59:16, 67:12, 67:21, 67:22, 68:9, 68:11, 69:6, 69:8, 69:9, 69:12, 69:13, 69:16, 69:17, 69:18, 69:20, 69:21, 70:1, 70:3, 70:13, 70:14, 70:15, 71:11, 71:14, 71:15, 72:2, 76:22, 77:11, 77:14	occupancy 56:7	32:2, 32:8, 32:18, 33:18, 34:3, 34:11, 34:17, 34:22, 35:17, 36:22, 38:13, 38:22, 39:2, 39:5, 39:16, 39:18, 39:19, 40:8, 40:10, 40:16, 41:4, 41:16, 41:18, 42:6, 43:4, 44:16, 47:5, 50:20, 53:17, 55:12, 59:11, 63:22, 64:5, 66:2, 66:6, 67:19, 68:1, 68:10, 69:2, 69:7, 69:10, 69:17, 70:6, 70:16, 70:19, 71:22, 73:4, 73:11, 76:7, 80:12, 80:15, 83:14, 84:15, 86:1, 86:5, 86:16, 86:19, 88:10, 89:5, 89:18, 90:5, 90:17, 90:21, 91:6, 91:14, 91:17, 91:20, 92:15, 93:5, 93:9, 93:12, 94:19, 95:2, 95:10, 97:13, 97:16, 97:18, 97:19, 98:3, 98:20, 99:11, 99:17,	112:18, 113:8, 113:19, 114:5, 114:15, 115:1, 115:3, 115:4, 115:10, 116:19, 117:1, 117:4, 117:9, 117:13, 118:5, 119:2, 122:4, 125:11, 129:20, 130:1, 130:7, 131:11
oaks 70:20	occur 89:13, 112:7		old 28:16, 28:19, 29:13, 30:10, 30:22, 31:10, 31:11, 31:12, 31:15, 38:17, 50:6, 61:9, 61:12, 67:9, 67:11, 67:12, 67:20, 68:11, 70:2, 70:4, 71:10, 72:3, 73:2, 88:21, 91:9
oath 6:1, 101:10, 115:14, 115:15	occurred 128:17		older 21:3, 127:16
obeying 23:12	occurring 81:4		olney 42:4
objection 90:12, 94:21, 97:11, 103:20, 120:16	october 1:11, 99:5, 129:8		once 17:1, 79:1
obscures 111:7	office 1:1, 58:16		one 5:11, 5:14, 6:21, 11:2, 16:8, 17:12, 17:14, 17:19, 18:12, 18:19, 21:22, 23:4, 26:7, 28:16, 33:14, 35:14,
	offline 130:13		
	oh 10:19, 17:20, 26:15, 27:10, 30:4, 31:18, 37:6, 40:19, 65:14, 68:1, 68:8, 68:10, 69:10, 102:20, 107:9, 113:2		
	okay 3:6, 3:19, 4:3, 4:6, 4:12, 4:16, 5:2, 5:6, 5:9, 5:20, 6:11, 7:13, 8:5, 8:11, 9:17, 11:8, 11:18, 12:9, 13:11, 13:17, 13:19, 14:8, 14:21, 15:20, 16:1, 16:4, 16:13, 17:15, 17:17, 18:1, 18:8, 18:22, 22:1, 24:5, 24:8, 26:2, 26:10, 27:7,		

Transcript of Hearing
Conducted on October 24, 2016

154

43:3, 43:11, 46:3, 46:7, 50:8, 50:11, 50:22, 56:21, 57:4, 60:20, 62:4, 62:14, 65:17, 68:2, 68:4, 68:7, 68:9, 69:5, 69:15, 69:21, 70:1, 71:10, 71:14, 74:19, 74:21, 77:7, 77:9, 77:16, 77:18, 79:15, 79:18, 82:20, 86:21, 89:7, 90:7, 91:6, 91:8, 92:4, 100:22, 113:11, 114:3, 116:5, 124:21, 125:10, 128:12, 128:13, 130:5 one's 108:10 one-half 17:15 ones 10:21, 26:13, 42:1, 70:22 online 98:13 only 14:12, 15:16, 18:12, 21:20, 26:12, 37:3, 50:11, 59:6, 63:3, 108:21, 117:7, 120:7, 120:13, 122:15, 124:13, 126:17, 130:21 open 102:1, 130:21 opened 75:19 operate 72:4, 72:10,	83:6, 84:22, 85:2 operating 71:16, 72:22 operational 45:22, 63:10, 101:19, 101:20 operations 39:13 opinion 59:15, 62:22, 63:5, 76:15, 77:17, 78:14, 86:10, 126:19 opponents 66:12 opportunity 6:19, 59:14 opposition 4:7, 4:14, 4:15, 7:17, 7:18, 20:7, 127:3 opposition's 6:14 orange 104:21 order 6:16, 120:20 ordinance 3:9, 16:10, 42:7, 121:17 orientation 104:22 orients 104:10 original 26:16 originally 99:3 other 5:14, 10:21, 10:22, 12:21, 13:1, 13:14, 18:19, 35:14, 41:20, 43:12, 54:5, 56:6, 58:8, 61:3,	69:22, 77:12, 78:19, 79:15, 79:18, 86:6, 90:21, 114:3, 117:1, 117:3, 117:10, 119:16, 124:22 others 48:15, 93:12, 116:14 otherwise 132:9 out 3:5, 6:16, 12:4, 12:20, 13:7, 14:16, 14:19, 15:16, 15:18, 15:22, 16:22, 17:22, 18:6, 21:12, 22:17, 27:9, 28:4, 28:7, 33:13, 35:7, 36:5, 46:10, 50:8, 53:5, 54:2, 55:10, 56:3, 61:15, 61:17, 61:18, 64:18, 68:20, 68:21, 73:1, 73:20, 77:5, 78:17, 79:2, 80:22, 87:3, 87:18, 88:8, 89:4, 89:14, 90:1, 92:16, 101:3, 101:8, 116:4, 117:11, 128:9, 131:17 outbound 77:2, 77:4 outcome 132:9 outer 67:11, 70:10 outie 102:6 outreach 128:22	outside 28:11, 28:12, 54:6 over 5:8, 30:11, 31:19, 35:14, 61:9, 62:4, 106:3, 106:7, 130:17 overall 61:13, 63:13 overcrowding 35:22 overnight 48:13 own 20:18, 39:14, 87:9 owner 62:12 owner's 7:2 owners 127:2 <hr/> P <hr/> page 2:2 pages 1:21 parents 35:20, 36:17 park 10:5, 19:17, 23:15, 53:3, 56:15, 56:19, 74:2, 85:16, 92:6, 92:7, 92:9, 92:10, 92:12, 94:11 parked 79:2, 79:12 parking 42:18, 78:6, 78:8, 78:20, 78:21, 80:6, 80:10, 81:4, 81:5, 81:12,
---	---	---	--

Transcript of Hearing
Conducted on October 24, 2016

155

81:18, 82:8, 82:10, 82:17, 82:20, 83:13, 83:21, 83:22, 84:14, 85:10, 85:15, 85:18, 92:3, 92:5, 92:7, 92:9, 93:2, 117:20, 117:22, 120:18, 121:8, 121:11, 121:16, 121:19, 121:22, 122:7, 122:9, 122:16, 122:17, 122:19, 123:2, 124:18, 125:2, 128:14 parking's 121:9 parochial 83:1 part 59:1, 79:12, 92:7, 95:6, 116:2, 124:2, 127:14 partial 104:4 participated 127:5 participating 19:6 particular 36:8 particularly 29:14 parties 130:17, 131:4, 132:8 pass 65:22 pass-by 64:21, 65:12, 65:16 pass-bys 65:10 passed 71:8	past 41:5 pat 4:3 path 120:13 patience 3:13, 3:21 pattern 31:5, 33:6, 33:7 patterns 34:19, 86:22 pause 27:6 paved 21:11, 33:10 paving 78:8, 78:17, 80:1, 80:21, 81:1, 83:10, 83:11, 85:1, 125:3 paying 15:7 peak 12:21, 43:16, 43:19, 44:6, 44:15, 44:18, 46:10, 46:12, 48:3, 48:4, 48:17, 49:8, 49:11, 50:3, 50:4, 50:6, 54:6, 55:18, 55:19, 58:5, 59:2, 59:7, 59:19, 59:20, 60:3, 61:22, 62:12, 62:14, 62:21, 63:17, 63:18, 64:3, 67:4, 71:16, 71:17, 74:20, 76:10, 76:21, 77:1, 77:2, 77:19, 87:12, 88:11, 88:13,	88:22, 89:1, 89:7, 89:11, 89:17, 89:22, 90:8, 95:7, 95:17, 98:1 penalties 7:22, 40:12 people 9:3, 12:2, 15:15, 15:19, 15:21, 17:21, 18:5, 20:8, 20:16, 20:17, 20:22, 22:3, 22:11, 22:16, 22:21, 22:22, 23:22, 24:1, 25:14, 31:9, 46:15, 48:21, 49:4, 51:21, 52:13, 55:10, 57:10, 57:22, 58:2, 60:16, 65:2, 89:15, 97:10, 116:13, 127:16 peoples 16:19, 16:20 percent 45:5, 45:7, 52:19, 53:1, 61:17, 61:18, 61:21, 106:3, 120:10 percentage 61:14 perfect 11:15, 93:10 perhaps 104:18, 111:10 period 39:9, 50:3, 50:5, 50:8, 50:12, 62:5, 64:10 periods 44:15 perjury 8:1, 40:12	permit 119:18, 119:20 permitted 85:11 person 46:20, 51:22, 53:6, 97:19 personal 39:14, 52:8 perspective 118:9 perspectives 119:8, 127:18 phone 99:10 pick 54:22 picking 21:2 piece 10:7, 63:15 pike 24:17, 67:13 pipes 44:22 place 9:8, 12:4, 48:1, 52:15, 52:16 plan 28:4, 67:1, 104:4, 107:14, 109:1, 123:4, 123:12, 123:14, 124:16, 127:21, 128:1, 128:2 planners 96:19 planning 18:20, 41:9, 41:14, 53:3, 74:2, 96:6, 113:17, 118:3, 129:4, 129:5, 131:2, 131:6 plans 27:1, 131:1 play 125:10
--	--	--	---

Transcript of Hearing
Conducted on October 24, 2016

156

<p>please 4:20, 7:20, 8:5, 14:2, 19:8, 29:2, 43:7, 96:1, 101:13, 103:9, 118:1</p> <p>plus 11:21, 81:17, 87:10, 89:15, 112:9, 112:13, 112:14</p> <p>point 13:1, 16:2, 28:4, 60:20, 82:6, 84:21, 85:18, 90:19, 91:19, 92:2, 98:4, 118:18, 119:4, 126:1</p> <p>pointed 56:3</p> <p>points 7:7, 110:15, 110:19</p> <p>policy 43:12, 45:1, 45:3, 71:19, 71:20, 72:7, 73:1, 73:21, 74:4, 74:8, 75:22, 116:3, 116:8, 116:18</p> <p>pool 49:4</p> <p>pooling 52:13, 54:1, 54:17, 58:9</p> <p>portion 78:6, 120:11</p> <p>possible 58:2, 64:20, 65:1</p> <p>posted 98:12</p> <p>postponement 128:19</p> <p>potential 37:16, 78:4</p>	<p>potentially 58:2</p> <p>practice 93:4</p> <p>pre-revision 108:2</p> <p>prefer 84:13</p> <p>preliminary 67:1, 123:3, 123:12, 124:16, 131:7</p> <p>prepared 7:5, 41:18, 43:9, 82:19</p> <p>present 3:17</p> <p>pretty 47:22, 56:1, 59:21, 61:7, 114:8</p> <p>previous 116:4</p> <p>primarily 14:6, 99:21</p> <p>prior 128:8</p> <p>private 81:21, 82:3, 109:4</p> <p>probably 61:7, 63:14, 89:17, 111:19, 120:3, 122:16</p> <p>procedure 116:3</p> <p>proceeding 29:12</p> <p>proceedings 132:5</p> <p>proceedings; 132:4</p> <p>process 22:16, 35:5, 95:19, 118:8, 118:9, 118:11</p> <p>product 103:10, 107:3</p>	<p>professional 76:15, 77:17, 78:13, 86:10</p> <p>proffered 54:11, 54:13</p> <p>project 21:8, 21:13, 24:13, 43:10, 45:2, 45:17, 56:12, 66:15, 66:16, 66:20, 66:21, 67:3, 86:11, 88:3, 88:4, 96:10, 119:16, 120:3, 120:21, 125:18, 126:19, 127:4</p> <p>projected 72:4, 72:10, 88:8</p> <p>projecting 64:6</p> <p>projections 96:16</p> <p>projects 51:7</p> <p>pronounce 27:19</p> <p>pronunciation 27:16</p> <p>properties 100:18, 126:20</p> <p>property 10:11, 24:16, 32:12, 34:5, 34:12, 34:16, 36:21, 37:7, 37:8, 56:12, 92:14, 101:15, 103:11, 103:14, 103:22, 105:1, 105:22, 106:2, 108:22, 114:2, 120:21, 124:19, 124:20, 127:2</p> <p>proportion 117:11</p> <p>proposal 78:11, 78:16,</p>	<p>79:21, 79:22, 81:12, 84:9, 84:12</p> <p>proposed 37:7, 78:5, 96:9, 103:13, 105:20, 107:4, 108:11, 110:4, 111:2, 112:1, 113:4, 115:19, 123:22, 124:13, 129:17, 130:19, 131:2</p> <p>proposing 92:5, 121:16</p> <p>provided 41:19</p> <p>provided; 132:6</p> <p>provision 24:15</p> <p>proximity 50:17, 56:10</p> <p>public 3:6, 56:6, 56:10, 110:8</p> <p>publication 46:6</p> <p>pull 75:11, 116:6</p> <p>purposes 84:20</p> <p>push 107:19</p> <p>put 7:6, 14:7, 18:20, 26:3, 61:5, 79:12, 122:3</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>qualifications 41:7</p> <p>qualified 41:2</p> <p>qualify 41:5</p> <p>qualitative 44:21</p>
--	--	---	--

Transcript of Hearing
Conducted on October 24, 2016

157

quarter 9:8, 13:1 question 18:19, 49:10, 56:4, 63:4, 82:12, 83:17, 86:10, 86:17, 86:18, 86:21, 90:21, 92:2, 95:13, 96:3, 100:15, 109:12, 109:14, 109:21, 110:7, 113:20, 114:3, 115:17, 115:21, 121:2, 121:3, 121:21, 130:5 questions 14:1, 14:4, 14:9, 16:5, 16:8, 17:16, 17:18, 24:9, 37:20, 38:1, 39:17, 41:2, 86:7, 89:19, 93:11, 114:3, 115:3, 115:12, 116:19, 117:2, 117:3, 130:7 quickest 25:15 quite 21:5, 21:11, 34:14, 36:17 <hr/> <p style="text-align: center;">R</p> <hr/> radius 121:20 raise 7:8, 7:20, 40:10, 74:11, 74:14 ramp 72:3, 91:13 ramps 67:10, 70:9 range 51:14, 102:15	rates 53:10 rather 67:11, 81:14, 123:11 reached 7:4 reaching 128:9 read 11:10 ready 3:4 real 61:16, 96:14, 96:20, 96:22, 126:17, 126:18 reality 118:10 realized 114:17 really 6:10, 12:18, 18:1, 22:4, 48:17, 59:17, 60:10, 81:6, 87:5, 91:19, 110:6, 111:8, 117:11, 123:9, 130:9 rear 102:5, 102:7, 104:11, 105:4, 105:9, 105:19, 105:22, 109:17, 110:6, 111:11 rears 104:22, 109:8 reason 20:21, 116:11 reasonable 56:1, 61:19 rebuttal 6:20, 7:7, 7:9, 100:11, 115:2, 118:22 recall 108:4, 129:12	recently 42:2 recognized 46:6 recognizing 76:12 record 3:22, 4:21, 7:21, 19:9, 26:22, 70:8, 94:4, 104:6, 107:8, 118:18, 132:4 recorded 132:4 recording 132:6 records 107:7 red 28:11, 28:12, 75:15 redirect 100:3 reduced 77:12 refer 103:11 referencing 38:17 referred 43:14, 64:21, 119:6 referring 10:19, 70:22, 88:20 reflect 119:13 reflected 32:20, 34:14, 129:2 reflects 53:7 refresh 44:5, 55:15 regard 43:8, 56:9, 126:17	regarding 100:14 related 42:13, 132:7 relates 51:21 relationship 100:17, 103:13, 107:3, 107:15, 113:22 relationships 104:8 reliable 58:13 remain 108:8 remainder 101:18 remember 27:18, 44:4, 111:21 remembered 107:9 remembering 22:13 rendering 119:7 replace 122:18 report 11:10, 53:8, 66:22, 119:10 reporter 3:4, 3:21 reports 41:19 request 120:17, 121:11, 123:9, 128:14 requested 24:13 requesting 82:21 requests 128:12 require 24:14, 85:14, 85:15, 121:10
--	---	--	--

Transcript of Hearing
Conducted on October 24, 2016

158

required 67:5, 90:10, 106:1, 109:1, 120:1 requirement 42:7, 119:17, 121:8, 126:12, 127:7, 128:4 requirements 47:11, 81:9, 128:1 requires 42:8, 45:5, 121:17 rescheduled 99:2, 99:5 reserved 99:6 residence 109:5 residential 3:10, 9:2, 15:1, 15:4, 15:13, 16:11, 41:20, 101:14, 103:9 residents 17:21, 18:11, 25:20, 33:12, 34:13, 116:14 respect 42:9, 78:16 respectable 11:11 response 119:14 responses 131:3 responsibilities 43:8 responsibility 98:4 rest 108:7 restate 55:16 restricted 81:5, 85:15,	85:18, 117:22, 121:9, 121:10, 121:11, 122:9 restricting 122:1 restriction 85:12, 123:2, 124:18 restroom 101:5 resubmitted 26:14 result 24:2, 66:14, 73:20 results 20:6 reverse 95:19 review 43:12, 43:13, 44:3, 45:1 revised 27:1, 104:4, 107:18, 131:1 ride 19:21, 49:3, 58:9, 58:14, 58:19, 91:1 right 3:4, 5:13, 5:15, 6:2, 7:14, 7:19, 7:20, 9:9, 12:19, 22:19, 24:5, 25:8, 26:22, 28:9, 29:7, 31:13, 31:16, 34:17, 34:19, 35:4, 37:19, 37:22, 49:13, 49:14, 51:2, 51:3, 51:7, 53:20, 55:3, 55:8, 55:12, 57:7, 64:7, 65:19, 69:1, 69:3, 75:13, 78:6,	79:8, 79:10, 79:13, 80:3, 83:2, 83:9, 87:14, 92:20, 93:1, 97:5, 97:8, 100:1, 104:3, 105:20, 106:14, 107:10, 111:16, 113:12, 113:17, 117:21, 118:12, 119:11, 126:15, 131:9, 131:16 river 42:3 road 24:18, 28:16, 28:19, 30:10, 31:15, 42:3, 44:21, 50:7, 61:10, 61:12, 65:20, 67:9, 67:10, 67:12, 67:21, 70:4, 70:12, 79:6, 82:1, 91:9 roads 21:10, 21:12, 21:22, 33:10, 66:14, 76:22, 81:21, 82:3 roadway 45:4 robenson 1:9 rockville 1:10, 24:17, 61:6, 67:13 room 122:14 rough 61:5 roughly 80:20, 94:12, 107:12 route 56:11, 56:13 routes 19:21	row 113:12 running 57:17 runs 46:20 rural 74:7, 74:9 rush 25:22 russel 104:6, 120:2 russell 107:10, 108:12 <hr/> <p style="text-align: center;">S</p> <hr/> safe 61:17, 64:10, 78:19, 81:3, 81:7, 81:13, 81:19, 117:21, 123:18 safely 83:6, 84:22, 85:2 safety 78:14, 86:13, 122:4, 123:22 said 3:16, 10:10, 10:11, 29:12, 77:14, 88:12, 91:11, 92:4, 94:2, 97:20, 102:17, 119:16, 132:4 salon 46:21, 59:1 same 47:21, 108:8 sandy 105:16 satisfies 43:20 satisfy 42:8, 128:4 saw 47:4
--	--	---	---

Transcript of Hearing
Conducted on October 24, 2016

159

<p>say 8:12, 22:3, 29:11, 30:3, 38:16, 47:19, 50:14, 54:12, 55:14, 58:14, 60:2, 65:9, 65:17, 69:19, 75:8, 77:4, 83:15, 84:22, 93:17, 94:1, 96:22, 111:2, 111:20, 117:5, 117:20, 121:4, 121:5, 121:7, 122:4, 124:8, 126:1, 130:4 saying 15:13, 50:2, 51:3, 52:16, 52:18, 52:21, 53:10, 57:9, 60:8, 60:12, 73:8, 75:21, 80:16, 83:5, 83:20, 112:20, 127:19 says 49:6, 52:9, 63:17, 69:2, 94:16, 121:7, 124:5, 124:22 scenario 124:21, 124:22 schedule 12:5, 17:1, 91:4, 93:15, 94:11 schedule's 94:3 scheer 1:22, 132:2, 132:15 school 35:9, 35:10, 35:15, 36:15, 38:7, 38:10, 38:15, 38:20,</p>	<p>39:3, 54:22, 90:10 schools 35:22, 36:5 scope 7:9, 75:21, 92:17, 93:2, 93:8 screening 82:5, 83:4, 84:14, 109:16, 110:2, 114:8 se 8:14, 15:17, 23:9 second 30:19, 30:21, 69:19, 74:22, 82:18, 108:14 seconds 75:6, 75:8, 75:17 section 78:5, 78:8, 78:19, 80:1, 107:14, 108:14, 108:15, 109:6, 125:3 sections 107:5, 108:7, 119:6 see 4:7, 11:19, 12:5, 13:2, 19:18, 19:21, 31:7, 31:18, 49:13, 49:14, 49:16, 49:17, 52:17, 52:20, 69:2, 83:15, 86:6, 92:21, 104:15, 105:6, 108:9, 109:16, 110:6, 110:7, 110:9, 111:8, 111:10, 113:11, 114:7, 125:8, 127:19, 128:20</p>	<p>seem 124:11 seemed 114:18 seen 10:4, 127:17 segment 82:21 sends 127:12 senior 9:7 sense 60:16 sent 99:6 separate 36:2 separated 106:22 separation 106:5, 106:15, 106:16, 108:15, 109:8, 112:2 september 99:3 series 107:5 service 24:14, 46:15, 47:11, 94:15 services 47:14, 47:15 serving 15:14 set 10:22, 60:1, 76:4, 105:20, 105:22, 107:19 setback 126:12 setbacks 119:21 sets 73:22 setting 12:6 seven 11:22, 48:21,</p>	<p>48:22, 50:14, 50:18, 62:2, 62:4, 77:6, 78:7, 80:4, 80:9, 80:14, 81:18 several 16:8, 46:2, 114:2, 116:11, 129:10 sfd 104:10 share 58:20 shares 104:12, 105:4 sharing 49:3, 58:9 shelter 1:4, 3:7 shift 11:20, 48:8, 48:12, 54:6, 55:4, 57:7, 57:15, 57:21, 58:7, 58:12, 58:18, 64:9, 89:12 shifts 48:11 shortly 48:9 should 19:19, 29:4, 38:16, 55:6, 55:10 shouldn't 99:19 show 104:6, 105:17 showed 120:5 shown 104:9, 107:14 shows 47:19, 107:15, 109:7, 109:14, 119:7</p>
--	---	--	--

Transcript of Hearing
Conducted on October 24, 2016

160

shuttle 100:12, 115:20, 116:5 side 5:16, 5:17, 5:18, 10:5, 19:17, 23:4, 36:8, 56:15, 56:19, 69:21, 80:7, 94:11, 104:4, 105:20, 110:9, 112:5, 112:8, 112:21, 113:2, 113:17 sides 119:22 sidewalk 35:11, 35:12, 35:16, 36:13 sidewalks 20:1, 20:3, 20:22, 23:17, 37:11, 38:19 sign 8:19 signage 33:10, 34:20 signal 75:10 signalized 68:6, 68:7, 68:12, 70:2, 70:3, 70:12, 70:13, 70:14, 70:15, 70:18, 75:9, 91:11, 91:12 signature-zq3pe 132:13 significant 55:22, 71:9, 73:3, 128:10 significantly 52:10, 72:7, 119:22, 120:9 similar 19:16, 102:8, 107:13, 108:9	similarly 19:22 simple 73:17 since 128:16 single 10:13, 13:16, 56:7, 101:17, 102:2, 102:8, 103:3, 104:10, 104:13, 104:19, 104:21, 105:5, 105:12, 105:17, 106:15, 106:17, 107:15, 114:17 sirens 9:9, 14:17 sit 4:20, 74:21 site 43:15, 44:18, 46:1, 50:10, 56:10, 57:20, 60:17, 61:15, 61:17, 65:22, 67:1, 67:8, 76:13, 107:14, 108:22, 109:1, 109:6, 110:4, 112:5, 120:13 sitting 11:14, 116:15 situation 79:5 situations 54:11 six 21:9, 28:17, 28:18, 28:19, 62:9, 77:7, 77:8, 77:9 size 23:10, 26:17, 52:9, 102:13 sizes 102:1 skip 23:1	sleep 9:12 slightly 112:15 slip 17:19 slowly 116:14 slows 79:7 small 23:10, 23:21, 25:7, 77:22, 92:9 smaller 23:9, 61:14, 102:1 smart 74:12 solemnly 7:22, 40:11 solution 54:7 some 11:10, 12:1, 36:19, 49:4, 54:21, 56:5, 60:13, 61:5, 61:9, 61:12, 62:7, 64:20, 74:17, 74:21, 74:22, 75:2, 75:3, 76:12, 76:13, 77:11, 82:6, 85:18, 90:19, 94:7, 94:8, 98:4, 102:7, 102:9, 104:7, 107:20, 109:13, 110:10, 110:21, 116:14, 128:17, 130:17 somebody 15:8, 22:7, 58:17 somebody's 79:5, 79:6 someone 62:11, 110:21	something 7:9, 18:16, 58:18, 96:10, 130:4 sometime 129:18 sometimes 82:15 somewhat 83:1 son 38:17 soon 21:10 sorry 5:7, 5:8, 6:6, 9:14, 14:22, 19:13, 27:15, 30:4, 33:16, 36:12, 48:20, 65:13, 89:18, 90:14, 102:18, 102:21, 112:10 sort 26:7, 56:3, 123:5, 125:11 source 105:15 south 32:12, 33:18, 33:20, 61:12, 62:6, 72:2, 72:6, 91:12, 92:13, 101:14, 103:10, 104:17, 110:17, 113:3, 114:1, 127:3 southbound 111:5 southern 122:17 space 9:6, 102:2, 109:4 spaces 121:16 speak 19:11, 63:12,
---	---	--	---

Transcript of Hearing
Conducted on October 24, 2016

161

63:14 speaking 3:5, 13:7, 27:9, 28:7, 68:21, 101:3, 101:8, 131:17 special 123:1 specific 52:15 specifically 63:14, 121:1, 128:2 specify 52:12 speculative 65:9 speed 20:21, 22:2, 23:12 speeding 22:4 speeds 21:1 spell 8:8 spelling 27:16 spilled 9:16 spits 73:19 split 77:5 spoke 19:4 spot 82:18 spring 105:16 square 102:3, 102:7, 102:16, 103:5 staff 42:19, 47:2, 47:3, 47:11, 48:15, 53:3, 53:7, 53:21,	57:10, 62:18, 62:19, 62:20, 66:22, 89:3, 89:12, 90:1, 116:2, 129:4, 131:3 staffing 47:21, 48:6 stage 123:11 staging 74:3 standard 72:7 standing 25:13, 35:20, 36:17, 36:18, 110:15, 110:16, 110:17 start 57:16, 57:18, 58:15, 60:12, 70:9, 89:14 started 128:9 starts 35:12, 93:21 state 8:5, 19:8 stated 11:20, 126:18 statement 2:2, 2:20, 43:9, 45:10, 50:1, 100:19, 117:16, 117:19 statements 8:1, 40:12 station 65:18, 65:19 stay 39:20, 58:17, 77:9, 100:21 step 125:10, 126:5 stick 104:18 sticking 21:12	still 15:12, 21:1, 44:6, 73:3, 76:19, 101:10, 115:14, 115:15 stole 56:4 stop 21:3, 29:22, 36:10, 36:13, 38:5, 38:16, 57:5, 65:20, 65:21 stops 35:6, 35:9, 35:10, 35:13, 36:4, 37:10, 56:22, 57:2, 57:5, 57:19 straight 29:9 street 6:8, 18:6, 20:3, 20:5, 21:1, 21:15, 23:15, 23:19, 25:5, 25:12, 30:9, 31:5, 31:21, 36:18, 78:21, 81:4, 81:11, 82:8, 82:10, 83:21, 84:14, 85:3, 92:8, 93:18, 105:2, 111:15, 111:22, 112:4, 112:6, 112:21, 113:5, 113:13, 114:20, 120:12, 122:7, 122:9, 125:2 streets 23:4, 36:8, 102:10 strict 58:18, 122:19 stuck 95:18	studies 46:9, 46:15, 87:17, 95:16, 95:21, 96:6, 97:1 study 43:18, 44:8, 50:7, 50:10, 67:5, 67:20, 68:4, 70:11, 71:10, 71:12, 73:14, 86:22, 87:8, 87:9, 87:12, 87:17, 88:10, 88:16, 88:18, 88:19, 89:22, 90:22, 91:8 stuff 46:21, 90:16 subject 6:1, 41:21, 43:5, 43:17, 88:5, 103:22, 105:1, 108:22, 121:8, 124:15, 124:20 submit 50:1, 125:9, 129:17, 130:18 submittals 130:18 submitted 118:17, 118:22, 119:9, 119:13, 129:7 subsequent 31:21, 32:6, 36:5, 36:17 subsequently 37:5, 66:17 subtract 79:2 subtracted 54:2 sufficient 121:19 suggested 58:5
---	---	---	---

Transcript of Hearing
Conducted on October 24, 2016

162

<p>suggesting 49:5 suggestion 81:6 super 104:7 supposed 20:14 sure 19:19, 20:9, 21:11, 28:3, 28:22, 55:17, 63:7, 68:18, 70:21, 70:22, 73:9, 73:14, 79:19, 87:7, 89:20, 93:8, 103:15, 106:14, 112:12 surplus 71:9, 73:3 surprise 17:11, 17:15, 39:5, 39:8 surprising 128:20 surrounding 26:3, 26:6, 27:8, 28:11, 118:15 survey 51:1 surveys 52:15 swearing 7:20 switch 78:1</p>	<p>takes 52:12, 75:10, 116:11 taking 17:21, 78:5, 80:22 talk 9:20, 12:13, 13:10, 16:13, 21:18, 22:15, 106:10, 110:14, 122:11, 122:21, 131:17 talking 13:13, 30:7, 37:6, 59:18, 61:22, 75:2, 83:21, 89:21, 92:17 talks 128:2 tandem 82:17 tax 45:7 technical 63:21 technically 130:10 teeter's 45:12 teeters 2:17, 18:20, 100:11, 100:22, 115:9, 115:13, 121:15 teeters: 115:15, 116:22 tell 12:8, 28:15, 73:5, 117:7 temporary 21:14 ten 52:19, 75:3, 77:2, 101:17, 121:16 term 121:20</p>	<p>terms 47:3, 47:6, 48:5, 61:13, 61:16, 63:12, 63:21, 66:19, 76:16, 86:13, 121:13, 121:14, 127:21 terrace 109:3 test 43:18, 43:20, 45:4 testament 126:21 testified 6:3, 40:17, 62:11, 107:10, 109:15, 120:6, 121:15, 126:17 testifies 14:10 testify 7:18, 69:1, 86:18, 118:16, 130:2 testifying 93:7 testimony 6:1, 6:14, 6:18, 7:17, 27:3, 28:3, 41:19, 45:12, 59:12, 62:16, 63:4, 71:6, 80:21, 82:7, 82:12, 85:17, 86:19, 94:5, 94:22, 100:6, 100:12, 109:22, 115:2, 116:4, 129:2, 129:22 th 99:3, 99:5, 129:8 thank 3:12, 3:21, 4:6, 4:12, 4:18,</p>	<p>5:20, 13:20, 17:17, 19:5, 34:22, 39:2, 39:16, 39:19, 41:6, 41:15, 41:16, 56:22, 66:2, 66:6, 76:6, 78:1, 84:17, 86:15, 95:9, 95:12, 99:17, 101:7, 101:13, 102:18, 115:1, 115:5, 117:1, 118:6, 119:2, 126:3, 131:12, 131:13, 131:14 thanks 18:22 thereafter 48:10 therefore 38:18, 45:5 thing 6:22, 21:14, 58:8, 77:12, 87:7, 91:6, 117:7 things 12:3, 47:22, 53:13, 54:1, 59:5, 76:2, 78:22, 93:4, 107:20 think 14:5, 14:11, 15:5, 19:3, 26:10, 47:7, 49:6, 50:21, 54:10, 54:19, 55:6, 55:21, 58:21, 59:3, 59:14, 59:20, 61:7, 61:10, 61:20, 62:10, 63:1, 63:19, 64:3, 64:13, 65:8, 77:21,</p>
T			
<p>take 6:13, 26:20, 49:1, 49:20, 56:6, 60:11, 60:13, 63:20, 73:6, 73:12, 77:3, 79:1, 80:4, 80:9</p>			

Transcript of Hearing
Conducted on October 24, 2016

163

82:10, 94:2, 106:4, 118:6, 118:21, 120:19, 121:13, 122:14, 125:1, 125:4, 126:20, 127:18, 128:10, 128:19, 129:1, 129:13 thinking 6:17, 94:20, 126:11 third 109:6, 119:17, 119:19 thomas 2:10 thought 27:1, 74:13, 79:8, 79:10, 79:11, 123:8 thoughts 61:5 thread 74:7 three 11:22, 28:16, 44:14, 48:11, 50:5, 62:8, 75:10, 77:15, 89:7, 106:7, 107:3, 109:7, 128:18 threshold 51:9, 60:1, 72:22, 73:21, 74:1, 74:16, 97:9 through 7:16, 22:12, 22:22, 23:3, 23:11, 25:16, 26:1, 29:21, 31:20, 39:10, 59:14, 74:20, 75:11, 75:14, 94:17, 123:3, 123:6, 127:22 throughout 46:10, 118:7	thursday 6:11, 62:11, 78:3, 98:8, 98:9, 98:18, 99:8, 114:12 time 12:15, 12:16, 13:22, 38:4, 55:4, 57:1, 57:15, 57:16, 57:19, 58:19, 62:18, 62:19, 64:10, 73:6, 79:1, 86:17, 114:12, 116:11, 117:4, 125:10, 128:16 times 18:7, 36:5, 40:18, 55:1, 82:17, 116:5, 119:21 tiny 9:5 titled 103:22 today 27:3, 63:2, 78:18, 79:17, 80:18, 80:19, 80:21, 80:22, 98:21, 99:6, 116:20, 124:5 together 8:18, 58:14 told 33:1, 98:21 tolerance 74:15 took 51:1 top 20:4 topic 72:15 total 48:3, 87:5 touch 118:3	toward 124:14 towards 105:1 town 20:11, 25:11, 32:11, 32:17, 101:18, 102:13, 104:13, 104:18, 104:20, 106:17, 106:21, 108:18, 109:9 townhouse 102:6, 103:2 townhouses 10:9, 10:12, 10:17, 11:1, 15:9, 102:15, 103:1 tpar 45:2, 45:5, 45:9 tractor 23:9 traffic 9:6, 10:2, 11:10, 11:14, 12:18, 14:6, 14:11, 14:12, 18:3, 18:4, 18:7, 19:19, 22:10, 22:19, 22:21, 23:1, 23:8, 25:2, 25:5, 25:22, 28:20, 29:5, 29:10, 29:15, 29:16, 30:19, 31:7, 31:9, 31:12, 32:7, 33:6, 33:7, 33:15, 34:19, 37:17, 37:21, 39:20, 40:20, 41:8, 41:9, 41:13, 41:14, 41:19, 42:10, 42:13, 43:9,	43:18, 44:8, 44:20, 46:8, 46:10, 50:1, 63:1, 63:2, 66:8, 66:10, 66:13, 67:5, 73:18, 78:18, 79:4, 86:13, 86:22, 87:19, 88:2, 88:3, 88:5, 94:19, 95:5, 97:20, 97:21, 99:22 traffic's 96:16 trail 111:4, 111:6, 111:14 trailers 23:9 transcribed 1:22, 132:5 transcriber 132:1 transcript 30:1, 30:3, 68:20, 132:3 transit 45:4, 49:4, 51:1, 52:13, 52:22, 53:11, 53:22, 54:16, 56:16, 57:11 translate 75:5 translates 77:7 transportation 41:9, 41:14, 43:11, 43:12, 45:1, 45:7, 46:3, 53:3, 56:6, 56:10 trash 12:1, 16:22, 42:22, 43:2, 46:19 trees 111:22, 112:4,
---	---	--	---

Transcript of Hearing
Conducted on October 24, 2016

164

<p>112:7, 112:21, 113:5, 113:13, 120:12 trip 43:14, 46:4, 61:2, 63:15, 66:3 trips 42:19, 43:16, 43:17, 43:20, 44:18, 46:12, 47:18, 48:3, 48:4, 49:6, 49:8, 50:2, 50:11, 51:8, 51:22, 52:1, 52:8, 53:6, 54:15, 55:15, 58:22, 59:6, 59:19, 59:20, 60:3, 60:12, 61:13, 61:22, 62:8, 62:9, 64:4, 64:21, 64:22, 67:4, 77:1, 87:13 trolley 111:3, 111:6, 111:14 truck 17:12, 79:4 trucks 12:1, 12:3, 14:15, 14:18, 17:3, 20:11, 23:8, 23:10, 24:16, 34:7, 78:22, 90:2 true 123:16, 132:3 truth 8:2, 8:3, 12:8, 40:13, 40:14 try 75:5, 98:5 trying 31:9, 33:22, 47:8, 79:16,</p>	<p>83:18, 89:18, 95:12, 123:5, 127:13, 127:16 tuck 127:16 tuckerman 13:13 turn 23:5, 31:13, 31:20, 33:8, 34:20, 61:17, 61:18, 91:12, 116:3, 116:7, 122:5 twice 17:2 two 5:10, 7:7, 13:3, 15:17, 16:5, 26:22, 28:16, 30:7, 31:9, 32:7, 33:3, 33:5, 42:4, 43:10, 44:14, 47:8, 57:6, 58:13, 67:15, 71:13, 79:3, 80:8, 87:6, 108:16, 108:17, 116:5, 118:9, 128:20 type 58:11, 59:5, 96:2, 109:13, 126:9 types 59:4, 103:10, 107:3 typical 62:13 typically 7:15, 29:8, 31:8, 89:13</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>uh 130:6 uh-huh 4:19, 8:15,</p>	<p>10:6, 12:17, 16:3, 16:18, 19:1, 19:7, 20:19, 21:7, 24:20, 25:8, 30:2, 36:16, 49:12, 49:15, 52:6, 54:20, 57:1, 58:10, 58:21, 60:21, 64:15, 66:18, 74:5, 76:11, 78:12, 84:19, 87:1, 87:21, 90:4, 91:2, 93:16, 93:20, 95:14, 96:7, 96:12, 97:3, 101:22, 102:4, 106:20, 121:6, 124:4, 126:10, 129:9, 130:14 un 83:12 un-signalized 71:11 unbuilt 88:1 under 3:9, 6:1, 7:22, 16:9, 21:5, 40:11, 72:7, 101:10, 108:16, 115:14, 115:15 undergrounding 128:14 understand 8:17, 11:4, 11:8, 13:19, 16:1, 28:3, 29:1, 35:1, 36:1, 36:6, 37:13, 37:15, 37:18, 51:6, 68:19, 73:8, 75:20, 82:5, 83:18, 84:9, 87:7, 95:5,</p>	<p>106:4 understanding 9:3, 15:2 understood 7:12, 36:20 undue 42:9, 86:12 unfiltered 111:18 unfortunately 37:3 unless 41:1, 103:19, 111:9 unobstructed 83:12 unsafe 125:1 until 49:19, 57:18, 115:6 urban 74:11, 74:13, 76:2 usage 48:17, 53:11, 54:16 use 3:9, 9:1, 42:8, 42:11, 43:5, 57:10, 57:12, 57:22, 58:11, 61:10, 63:13, 73:15, 77:11, 77:14, 83:2, 96:19, 101:5, 118:15, 123:11, 123:22, 124:3, 126:9 users 127:12 uses 46:7, 82:18, 104:8, 106:6 using 24:22, 31:5, 58:2 usually 82:16, 97:4</p>
--	---	--	---

Transcript of Hearing
Conducted on October 24, 2016

165

utility 110:8	visitors 11:20, 12:5, 20:11, 22:6, 24:21, 34:6, 34:10, 34:13, 39:6, 39:9, 42:20, 46:17, 53:19, 63:6, 63:11, 63:20, 64:2, 64:12, 64:19, 84:3, 89:16, 90:2	walkers 20:3, 23:20, 90:10 walking 36:7, 52:14, 110:21, 111:3 walter 90:9 wanna 3:12, 7:8, 9:1, 9:5, 11:6, 28:1, 28:2, 50:7, 54:7, 68:13, 68:18, 73:5, 73:6, 74:9, 76:9, 78:1, 87:7, 91:6, 127:14, 128:5 want 11:6, 13:16, 20:22, 23:1, 68:14, 68:22, 79:20, 81:19, 114:14, 125:2, 127:11 wanted 65:12, 70:20, 70:21, 86:9, 92:6, 100:8, 100:18, 114:19, 115:8, 121:2 wash 16:21 water 9:16, 21:8 way 13:5, 21:20, 23:3, 25:15, 25:21, 29:14, 33:21, 33:22, 47:1, 47:22, 54:14, 54:18, 65:6, 65:7, 67:13, 71:14, 71:15, 78:7, 79:3, 79:9, 79:10, 79:13, 79:15, 79:18,	83:2, 83:5, 83:9, 87:17, 102:6, 117:21, 122:15 ways 22:5, 46:2, 56:17, 93:21 we'll 9:7, 14:7, 18:21, 26:22, 39:21 we're 4:11, 6:15, 7:20, 8:16, 12:20, 13:3, 14:18, 20:8, 20:9, 21:3, 21:11, 22:18, 22:19, 36:18, 37:21, 39:21, 49:5, 51:20, 54:14, 59:18, 76:3, 87:12, 89:21, 92:17, 95:18, 100:21, 119:17, 124:5, 127:15, 128:19, 129:16 we've 7:1, 7:16, 127:6, 128:16 web 98:14 website 98:14, 105:16 wednesday 6:11 week 17:1, 17:2, 62:15, 129:18 weekend 39:6, 94:20 weekends 39:3, 94:15, 95:6 weeks 128:18 welcome 39:19, 68:16,
value 126:18 van 116:3, 116:5, 116:12, 116:15 vantage 110:15, 110:18 various 110:15 vehicle 52:1, 52:7, 53:6, 54:15, 56:7, 75:8, 75:17, 77:8 vehicles 51:22, 78:22 verge 95:3 versa 122:6 versus 25:6, 58:16, 77:5, 106:6, 110:16 via 24:18 vice 122:6 view 105:9, 105:20, 106:14, 107:14, 110:11, 111:18 views 100:8, 100:15, 114:20 vision 111:1 visit 24:3 visiting 62:13, 62:14 visitor 63:2, 63:15, 64:21	voice: 3:14, 3:15, 4:8, 4:12, 4:15, 4:18, 8:4, 32:16, 75:1, 76:6, 83:17, 83:20, 84:3, 84:7, 84:11, 84:15, 84:17, 84:19, 101:5, 101:7, 116:20, 117:1, 117:6, 117:10, 117:14, 130:4, 130:7, 130:11, 130:14, 131:14 volume 23:8, 23:14, 34:4, 73:16, 91:4 volumes 73:18 volunteers 8:16 voting 20:16	walk 35:20, 38:18, 49:5	
v	W		

Transcript of Hearing
Conducted on October 24, 2016

166

69:1, 100:21 welfare 124:1 went 127:21, 130:17 weren't 62:16 west 30:13, 30:14, 61:1, 61:18, 62:1, 67:22, 70:15, 71:14, 76:13, 76:20, 77:5, 77:6, 80:7, 126:14 westbound 67:10, 72:3, 76:17, 76:18 western 120:15 whatchamacallit 82:15 whatever 32:14, 77:13, 99:13, 99:15 whenever 11:9 wherever 131:10 whether 25:7, 31:17, 32:5, 33:7, 33:9, 78:15, 82:19, 84:21, 121:19, 127:9 whole 8:2, 40:13 wide 120:7 widen 79:11, 80:1 widened 79:13 widening 123:21 wider 79:10 wild 5:5, 5:11,	5:16, 98:16, 124:6, 129:6, 129:7 willing 128:15 wise 9:8 wish 122:2, 130:12, 131:4 within 12:22, 78:8, 90:11, 92:22, 119:16 without 32:6, 86:12, 123:2, 124:6 witness 7:6, 40:3, 40:5, 40:6, 115:9 witnesses 6:15, 7:10, 7:11 wondering 82:4 wood 5:5, 7:3, 10:8, 70:12, 98:16, 129:6, 129:7 word 78:9 work 8:18, 21:6, 47:22, 54:18, 56:6, 65:6, 65:19, 66:1, 128:22, 129:16 worked 118:14, 120:4, 127:6, 128:16 workers 15:15 working 15:15 world 96:14, 96:20, 96:22	worst 50:8 wouldn't 27:2, 111:8 write 93:15 written 129:17 wrong 95:16, 95:22, 96:20 wssc 21:8 Y yard 110:6, 111:12 yeah 10:2, 15:14, 17:6, 36:3, 44:9, 45:16, 49:22, 59:4, 60:18, 64:19, 65:7, 68:15, 69:14, 79:17, 81:2, 81:16, 83:7, 84:4, 86:4, 90:13, 94:16, 97:22, 98:11, 101:6, 116:10, 122:22, 123:13, 125:17, 129:7, 130:4 years 10:4, 42:5 yield 91:12 yourself 4:21 yourselves 3:22 Z zone 126:12 zoning 1:1, 3:9, 9:4, 16:9, 42:7,	119:17, 119:20 0 06 94:11 1 1,011 72:5 1,263 72:4 1,301 71:17 1,500 102:16, 102:20, 102:21 1,550 71:21, 74:16, 75:6 1,990 71:17 10 1:12, 81:10, 85:4 100 2:16 104 9:5, 16:17, 46:1, 47:20 11 25:13, 48:12, 48:13, 80:8, 81:10, 81:17 114 2:18 116 2:21 12 62:3, 93:21, 93:22, 131:18 120 126:14 126174 1:20 13 62:3, 77:2, 77:5, 79:3 132 1:21
---	---	---	--

Transcript of Hearing
Conducted on October 24, 2016

167

<p>14 1:5, 57:6, 79:3</p> <p>15 2:6, 17:21, 18:5, 18:12, 48:3, 48:13, 49:6, 55:19, 59:19, 61:21, 61:22, 75:3, 77:16, 77:18, 89:11, 116:12, 116:16</p> <p>15,000 102:7, 102:17</p> <p>155 101:17</p> <p>1550 73:21</p> <p>16 1:5, 10:3</p> <p>1614 3:7</p> <p>17 57:18</p> <p>19 2:4, 129:8</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2.67 3:11</p> <p>2.71 9:4</p> <p>20 35:14, 36:14, 38:20, 55:7, 75:3, 77:16, 77:18, 78:17, 78:20, 79:1, 79:13, 80:20, 80:21, 81:1, 81:7, 81:8, 83:10, 85:1, 85:3, 85:8, 85:22, 93:22, 99:5, 110:20, 116:12, 120:7, 126:12</p> <p>200 47:9, 120:10</p>	<p>2014 67:2</p> <p>2015 128:8</p> <p>2016 1:11, 128:7</p> <p>22 38:8, 78:17, 78:20, 80:15, 81:8, 83:9, 83:10, 85:1</p> <p>23 1:12, 48:3, 59:19, 59:20, 64:3, 64:11, 76:9, 76:10, 77:1</p> <p>24 1:11, 2:8, 57:6</p> <p>25 12:22, 45:5, 45:7, 48:8, 48:20, 49:14, 49:16, 50:14, 53:5, 55:9, 57:20, 106:1</p> <p>270 22:20, 31:19, 33:16</p> <p>28 2:9, 51:13, 120:9</p> <p>29 51:8, 51:10, 51:12, 51:13, 80:1, 80:14, 81:14, 97:9, 125:3</p> <p>2: 93:21</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>30 38:11, 39:9, 43:17, 43:19, 43:22, 44:1, 44:2, 44:6, 44:7, 44:10,</p>	<p>44:11, 44:18, 49:8, 49:17, 50:2, 50:13, 51:9, 52:10, 52:11, 53:5, 54:15, 56:17, 60:3, 60:11, 67:4, 87:10, 87:12, 89:10, 94:8, 94:9, 94:12, 98:1, 99:3, 131:18</p> <p>34 26:9, 26:16, 27:7, 107:8, 108:16, 119:5</p> <p>35 38:20, 49:18</p> <p>355 61:6, 61:7</p> <p>37 2:8, 106:2</p> <p>38 120:9</p> <p>3: 38:20, 55:7, 55:9</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>40 102:11, 108:10, 108:11, 108:18</p> <p>41 2:11</p> <p>42 93:22</p> <p>45 57:4, 89:11, 107:17</p> <p>48 106:3</p> <p>49 106:16, 107:16, 107:18</p> <p>495 22:20, 29:6, 29:12, 33:16, 67:10, 72:3,</p>	<p>91:9</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5,000 102:3, 103:5</p> <p>50 47:8, 61:17, 61:18, 61:21, 75:8, 75:17, 77:4, 95:17</p> <p>500 72:11, 72:18</p> <p>53 2:12</p> <p>54 2:11, 57:5</p> <p>5510 3:11</p> <p>560 72:17</p> <p>5609 8:10</p> <p>571 72:10, 72:18</p> <p>5902 19:15</p> <p>59332 3:9</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>60 9:3, 44:15, 50:4, 50:12, 75:17</p> <p>65 107:1, 109:8</p> <p>67 118:21</p> <p>6: 44:6, 44:7, 44:10, 57:4, 57:5, 57:18, 57:20, 89:10, 89:11, 93:21, 93:22, 94:11</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>72 26:3, 79:9,</p>
---	---	---	---

<p>79:14 76 131:8 79 120:5 7: 38:11, 39:9, 57:6, 89:10, 89:11, 93:22</p> <hr/> <p>8</p> <hr/> <p>820130130 67:2 83 103:16, 103:17, 103:19, 113:10 87 2:13 8: 38:8, 39:9</p> <hr/> <p>9</p> <hr/> <p>90 9:4, 101:19 92 2:14 94 18:11 9: 44:6, 44:11</p>	
---	--